United States Court of Appeals

for the Second Circuit

APPENDIX

75-1154

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In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

HOWARD FINKELSTEIN, a/k/a ROBERT HOWARD, ANTHONY SCARDINO, ALAN SEGAL and EDWARD ZUBER,

Appellants.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

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A Ber-Lee Fabrics.

Q Are you a principal of that firm?

A Yes, sir.

Q One of the owners?

A Yes, sir.

Q And in 1969 what was the name of that firm?

A Renba Fabrics.

Q Am I to understand that Eddie Levine was one of your employees?

A That's right.

Q In what capacity was he employed?

A Salesman.

Q Now, at the time that he was employed by you in 1969 did you and he discuss stock?

A He discussed this stock.

Q Other than that?

A No, sir.

Q Did you purchase any other stock in 1969?

A Yes, sir.

Q 1970?

A Yes, sir.

Q Speculative stock?

A No, sir.

Q This is the only speculative stock that you

purchased?

A That's right, yes, sir.

MR. WINOGRAD: May I see the Hirsch & Company account, please?

Q While they are looking for that, did you ever discuss with Jack Levine --

A No, sir, I don't even know the man.

T4

Q You don't know Jack Levine?

A No, sir.

MR. WINOGRAD: I have no further questions.

MR. DOYLE: No questions.

MR. NEWMAN: I have one or two.

CROSS EXAMINATION

BY MR. NEWMAN:

Q When you bought the stock, you were in this fabric company?

A Yes, sir.

Q How long had you had that business in 1969?

A I was in business five years, that particular business.

Q Before that you had been in manufacturing?

A I was in another business, textile business, but under a different name.

Q The business that you had in 1969, how many employees did you have?

A About 12, 14.

Q What was your total sales that year?

MR. WALKER: Objection. It's irrelevant.

THE COURT: Sustained.

Q Where was your office or your business located?

MR. WALKER: Objection. It's irrelevant.

mmh2 Berman-cross

THE COURT: Sustained.

MR. NEWMAN: I have no further questions.

(Witness excused.)

MR. SIFFERT: The government calls Mr. Tobias.

MR. WALKER: Your Honor, I have an SEC attestation that I would like to offer.

THE COURT: Is there any objection?

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 15 received in evidence.)

R O B E R T W. T O B I A S, a witness called on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Tobias, by whom are you employed?

A Coolidge Bank and Trust Company, Watertown, Massachusetts.

Q Is that a successor bank to the Industrial Bank?

A Yes.

Q Does the Coolidge Bank maintain the books and records of Industrial?

A Yes.

Q I show you Government's Exhibits 27B and 27D for identification and ask you if you can identify them.

A Yes.

Q Are these both made and kept in the ordinary course of business?

A Yes.

Q Is it the ordinary course of business to make and keep those documents?

A Yes.

MR. SIFFERT: I offer them.

MR. DOYLE: What are these?

MR. SIFFERT: The liability ledger card and a note.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibits 27B and 27D received in evidence.)

xx

Q Can you explain to the jury the entries on the ledger card?

A Yes, the first one is October 17, 1969, and indicates a new loan of $60,000 due January 15, 1970.

Q Skipping down to the entry on February 10th, does that indicate another loan?

A Yes, it indicates a renewal of the first loan

at a reduced amount.

Q The entry there is on February 10th. I show you Government's Exhibit 20D in evidence and ask what date it bears.

A January 15, 1970.

Q Is this the renewal note for $45,000?

A Yes.

Q Can you explain to the jury why the renewal note of $45,000 is dated 1-15, rather than 2-10?

A Yes, it's dated the due date of the original note, which was $60,000, due January 15, 1970.

Q Directing your attention to the entries of payments, one is in the amount of $29,042? Is that correct?

A Yes.

Q I show you Government's Exhibit 27G for identification and ask if you can identify that.

A Yes, I can.

Q Are these microfilm copies of deposit slips and checks made and kept in the regular course of business?

A Yes.

Q Are these checks kept in the regular course of business?

A Yes.

MR. DOYLE: What are they?

mmh5 Tobias-direct

MR. SIFFERT: Securities Planners deposited in Industrial Bank.

MR. DOYLE: No objection.

(Government's Exhibit 27G received in evidence.)

Q I show you Government's Exhibit 27F for identification and ask if you can identify that.

A Yes.

Q What is that?

A They are broker advices explaining the credits paid for the sale of stock.

Q Were the yellow copies received by you, by the bank, in the ordinary course of business?

A Yes, they were.

MR. SIFFERT: I offer these in evidence.

MR. DOYLE: No objection.

(Government's Exhibit 28F received in evidence.)

Q Do these advices reflect the sale of Pioneer Development stock with the net amount due on the bottom?

A Yes, they do.

Q And the first batch, this paper clipped together with a tabulator tab reading $2,942, was that tab made and prepared by Industrial Bank?

A Yes, it was.

Q And that equals the amount of 27G in evidence?

A Yes.

Q I show you Government's Exhibit 27H for identification and ask if you can identify it. It consists of four checks and a tabulator tab.

A Yes.

Q Were these made and prepared in the ordinary course of business?

A Yes.

Q Was it the ordinary course of business to make and prepare these documents?

A Yes.

MR. SIFFERT: I offer these in evidence.

MR. DOYLE: No objection.

xx (Government's Exhibit 27H received in evidence.)

Q What is the total amount indicated?

A $7,808.

Q Is that amount indicated on the second page of the security advices?

A Yes, it is.

MR. SIFFERT: No further questions, your Honor.

MR. DOYLE: No questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. SIFFERT: Your Honor, for the purposes of

expediting the case I would offer Government's Exhibits 23A through 23H in evidence. They are bank documents of the Valley Bank of Nevada.

THE COURT: Any objection?

MR. PAPE: I would like to review them, your Honor.

MR. SIFFERT: They have all been shown to counsel before.

THE COURT: Do you have the minutes of any of the pre-trial sessions here?

MR. WALKER: I believe so.

THE COURT: Do you have a copy for the court?

MR. PAPE: Your Honor, I have no objection as to competency, only as to relevancy at this time of E and F.

THE COURT: May I see E and F?

Would you see that you do get the minutes of all the pre-trial sessions? Make them available to the court.

MR. WALKER: Yes, your Honor. I have one here.

MR. SIFFERT: This is one document which has bearing on that to which there is no objection. These also concern that, your Honor.

THE COURT: Overruled.

MR. PAPE: Although I don't have objection as to

competency, I understand that the bank employee is to be here and I would have two questions of him to expedite things now. Are you ready to call him?

MR. SIFFERT: No.

MR. PAPE: Then I object on the grounds that no foundation has been laid.

THE COURT: Is he coming?

MR. PAPE: May I approach the side bar?

(At the side bar.)

MR. PAPE: This concerns Richard McKibbon. If you will represent to me that this bank official cannot help us in finding Richard McKibbon, I would not require that you bring him in.

MR. SIFFERT: I will so represent.

MR. PAPE: When was this account closed? Or was it closed?

MR. SIFFERT: I have not asked him that question.

MR. WALKER: It seems to me as far as this inquiry is concerned --

THE COURT: It has nothing to do with the relevance of these documents at all. You can call him as your witness.

(In open court.)

THE COURT: Objection overruled.

UNITED STATES OF AMERICA

vs. 74 Cr. 908

HOWARD FINKELSTEIN, et al

Before: HON. LLOYD F. MacMAHON, District Judge.

New York, December 6, 1974

STENOGRAPHER'S MINUTES

TESTIMONY OF ALLEN GRANT

(Government's Exhibits 23A through 23H, inclusive, received in evidence.)

MR. WALKER: Your Honor, could I read this attestation that has been received in evidence to the jury?

THE COURT: Yes.

(Mr. Walker reads from Government's Exhibits 15 in evidence to the jury.)

MR. WALKER: I call Allen Grant.

A L L E N G R A N T, a witness called on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR.WALKER:

Q Mr. Grant, how are you employed today, sir?

A In the fur business.

Q Directing your attention to 1970, early 1970, how were you employed at that time?

A Selling furs.

Q What was the name of your firm?

A Allen Grant.

Q Where were you located?

A 333 Seventh Avenue.

Q In New York City?

A New York City.

Q Will you explain, sir, what your line of work was? Where did you fit within the fur business?

A I sell furs to stores and to individuals.

Q At that time, sir, did you know Mike Gardner?

A Yes, sir.

Q How long had you known Mr. Gardner?

A Oh, I guess about a year or so, maybe more.

Q Did there come a time, directing your attention to January 9, 1970, when you received a telephone call from Mr. Gardner?

A Yes, sir.

Q Sir, where were you when you received that call?

A In my office.

Q What did Mr. Gardner say to you at that time?

A He had some clients for me who were very big spenders.

MR. DOYLE: Can you speak louder?

THE WITNESS: He had some clients for me who were big spenders.

MR. DOYLE: Thank you.

Q Was the name given, sir?

A No, just a man by the name of Zuber.

Q Did he mention any other individuals at that time?

A No, sir.

Q What did he say?

A He said they wanted to buy some furcoats.

Q Do you recall anything further that was said at that conversation?

A No, that was all.

Q Was an appointment made?

A Yes.

Q How was that done?

A By telephone.

Q When?

b3 A The same day.

Q Who was in on that conversation?

A Gardner and myself.

Q What did he say at that conversation?

A He made an appointment for them to come down and he said they would be down that day.

MR. DOYLE: I'm sorry. I just can't hear the witness.

THE COURT: He said he made an appointment for them to come down and he said they would be down that day.

MR. DOYLE: Thank you.

Q And, sir, was anything further said in this

conversation?

A No, sir.

Q Later on that day did certain individuals come to your store?

A Yes, sir.

Q Who were they?

A Edward Zuber, as he introduced himself to me, his wife, Mrs. Zuber, Mr. Howard, Bob Howard, and I don't know if Burney Acton came that day, but he came subsequently.

Q You don't know whether Burney Acton came that day or on a subsequent date?

A Right.

Q Tell us as best you can recall what was said at that time and who were present.

A Myself, Mr. and Mrs. Zuber and Bob Howard.

Q What was the conversation?

A They said they wanted to buy some furs from me.

MR. NEWMAN: Objection. Would the witness clarify who said what.

THE WITNESS: Okay. Mr. Zuber said he wanted to buy some furs from me and he said that he has to get quite a few coats and he would exchange stock for coats.

Q What was said about the stock?

A Well --

Q Who spoke?

A Mr. Zuber.

Q What did he say?

A He said to me the stock is called Pioneer Development.

MR. DOYLE: We can't hear the witness.

THE WITNESS: I'm sorry. I am speaking loud. Do you want me to shout?

THE COURT: Well, speak a little louder than you are.

THE WITNESS: He said it was a stock called Pioneer Development and it's a very good stock, selling about $6 at the time, and they intended it go very high.

MR. DOYLE: I'm sorry.

THE COURT: It was a stock called Pioneer Development and it's a very good stock, selling about $6 at the time, and they intended it go very high.

MR. DOYLE: Thank you.

THE WITNESS: (Continuing) And he said to me that the only way he would make the sale, the stock in exchange for the coats, was if I gave him a letter saying that I would not sell the stock for 60 days and gave him the option to buy back the stock at $10.

Q Was anything said, sir, concerning the amount?

A Yes. We made a pricing of the coat, roughly speaking, about $42,000.

Q What was the amount of the stock?

A 6900 shares.

Q Was anything said by Mr. Zuber concerning the company at that time?

A He said the company was going to make a lot of money and he expected the stock to go very high and that is the reason he asked me to give him this paper saying he could buy back in 60 days at $10.

Q Now, sir, in buying the stock, when trading the coats for the stock, did you place any reliance on this offer to give him an option?

A Well, I went up and asked the people I knew--

Q No, sir. My question is simple.

MR. NEWMAN: I believe the witness is trying to answer the question, your Honor.

THE COURT: I think he is not responding. Overruled. Reframe it.

Q Simply, sir, you stated that Mr. Zuber asked for an option for him to purchase the stock back in 60 days at $10 a share? Is that correct?

A Yes, sir.

Q Following his offer to do that did you rely on that offer by him in deciding to make the transaction?

A Yes, sir.

MR. GREENBERG: Objection to the leading manner of the question, your Honor.

THE COURT: Overruled.

Q Why?

A Well, I didn't deliver the coats at the moment. The coats had to be lined and I just thought he was recommended to me and I didn't think they would send anyone who wasn't good.

THE COURT: What kind of furcoats were these?

THE WITNESS: Mink and sable, your Honor.

Q Was anything said by Mr. Zuber concerning the company itself at that time, what the company did or anything to that effect?

A It was a mining company. That is all I knew about it. In Reno, I think.

Q Were any documents executed on that day?

A No, sir.

Q Did anything further happen at that meeting that you can recall?

A No, sir.

Q Directing your attention to January 10th, what

happened on January 10th?

A Well, Mr. Zuber came down with Mr. Howard and his wife again, and I think -- now I am positive-- Mr. Acton came in with them and he had the stock certificates with him.

MR. NEWMAN: Who had?

THE WITNESS: Mr. Zuber.

Q Did you have a conversation with anyone at that time?

A No, at that moment, no.

Q What was the next thing that happened?

A Well, Mr. Zuber gave me the stock with the stock powers, and the coats were not lined, they had to line them-- do you want me to say it in my own words?

Q Do you recall anything that was said at that time?

A No. I had my girl in the office draw up that option to buy back the stock, 60 days for $10.

Q Was that what Mr. Zuber had asked for?

A Yes, sir.

Q Did you agree to give him that option?

A Yes, sir.

Q I show you Government's Exhibit 63B for identification and ask you if you can identify that document.

A Yes, sir.

Q What is it?

A This is a stock option to buy back Pioneer Development at $10 and it is signed by Mr. Zuber, myself and Mr. Robert Howard as a witness.

Q Is this the copy that you retained?

A Yes, this is the one I retained.

Q And you turned it over to the United States Attorney's office?

A Yes, I did, sir.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

xx (Government's Exhibit 63 received in evidence.)

Q Sir, I also show you 63A for identification and ask you if you can identify that.

A Yes, sir, these are the coats and the amount of the bill.

MR. DOYLE: I didn't hear what you said.

A These are the coats and the amount of the bill.

Q Is this a copy of a bill which you retained?

A Yes, sir.

MR. WALKER: I offer it.

MR. KIRSCHNER: No objection.

xx (Government's Exhibit 63A received in evidence.)

Q Are both of these documents dated January 10, 1970?

A Yes, sir.

Q Now, sir, what was the actual value of the coats which you turned over for the 6900 shares?

A Approximately about $15,000 give or take, approximately $15,000.

THE COURT: Total?

THE WITNESS: Yes.

Q So this figure of $42,000 on the receipt is not the true cost of the coats to you?

A No, that was the selling price.

Q Why did you mark up the coats to $42,000?

A Well, I knew nothing about the stock whatsoever. It is an over-the-counter stock, and with the option I gave for 60 days, I know stocks can go down to practically nothing, so I was gambling on the fact if it did go down I still might be able to retrieve something.

b4

Q Sir, did you give the original of this bill, Government's Exhibit 63A, to Mr. Zuber?

A I don't remember.

Q Does the bill bear Mr. Zuber's name on it? Does that refresh your recollection?

A Yes, Mr. Edward Zuber.

Q Does that refresh your recollection, is my question?

A Did I give him one?

Q Yes.

A I don't remember if I gave him one.

Q You retained a copy for your records? Is that correct?

A Right.

MR. WALKER: May I just read the address on here of the document? It is Edward Zuber, care of Pioneer Development, Drake Hotel, 56th and Park Avenue, New York City. And if I could read the option agreement, your Honor, it is on Mr. Grant's stationery and it is dated January 10, 1970, and it reads:

"I, Allen Grant, do hereby give Mr. Edward Zuber the exclusive right and option to buy at $10 a share the total of 6900 shares of free trading over-the-counter stock in Pioneer Development Corporation, said option to start on the 12th day of January, 1970, and ending on the 14th day of March, 1970."

This document is signed by Mr. Zuber, is it not?

A Yes.

Q And by yourself?

A And Mr. Howard.

Q Yourself and Mr. Howard?

A Yes. I don't know if Mr. Howard's signature

is there? Is it? I'm sorry.

Q Well, the document speaks for itself.

A Yes, sir.

Q Was this signed in your presence?

A Yes, sir.

THE COURT: Signed just by Zuber.

MR. WALKER: Zuber and Howard.

THE COURT: Was Mr. Howard present at all these times?

THE WITNESS: Yes, your Honor.

THE COURT: That you testified about?

THE WITNESS: Yes, your Honor.

Q Mr. Grant, did there come a time, sir, when you took the stock certificates which you had received and sent in to the transfer agent of the company?

A Yes, sir.

Q I would like to ask you, sir, did you have any conversations with any individual after you received the stock about Pioneer Development?

A Are you speaking originally? Yes, sir.

Q Will you tell us whom you had that conversation with and where it occurred?

A Alan Segal over on East 61st Street. I don't remember the address. Right off Lexington Avenue.

THE COURT: Speak up a little bit, please.

Q Did you go up there with Pioneer in mind?

A Yes, sir.

Q Whom did you speak to there?

A Mr. Segal.

Q Was anyone else present?

A Mr. Gardner.

Q How long after you received the stock did you have this conversation?

A The same day.

Q What was said between you and Mr. Segal and Mr. Gardner at that time?

A Well, I didn't know anything about the company, so I asked Mr. Segal what he thought of the company. He' said he thought it was a very good company and he said he would like to buy some additional shares.

MR. DOYLE: Mr. Grant, I'm sorry --

THE COURT: He said he thought it was a very good company and he said he would like to buy some additional share

MR. DOYLE: Try to speak louder.

A -- if he could get it at $3 a share, he said.

Q Was that the extent of that conversation?

A Yes, sir.

Q Did you hold on to your Pioneer stock?

A Yes, sir.

Q Did you try to sell the stock after the 60-day option had expired?

A Yes, sir.

Q What result did you have?

A It was worth a few pennies -- I don't remember exactly how much.

Q In your conversation with Mr. Segal, did Mr. Segal tell you at any time that he had sold large quantities of Pioneer stock?

A No, sir.

Q Did he tell you at any time that the mine, the mercury mine, was not in commercial operation?

A No, sir.

MR. DOYLE: If the full conversation has been brought out, there is no point in going through all the things that were not said.

THE COURT: I don't know any other way to establish omission.

MR. DOYLE: Yes, ask him what was said, and if that is complete, that is the end of it.

THE COURT: Overruled.

Q Did Mr. Segal ever tell you that Pioneer Development Corporation had produced no revenues?

A No, sir.

Q Did Mr. Segal ever tell you that Pioneer Development Corporation had produced no earnings?

A No, sir.

Q In your conversations with Mr. Zuber, Mr. Howard or Mr. Acton, did any of those individuals ever tell you that Pioneer was not in operation?

A No, sir.

MR. NEWMAN: I am going to object and ask that it be stricken. There is no evidence that he ever had a conversation with the defendant Howard Finkelstein.

THE COURT: Overruled.

MR. WALKER: The testimony is that he was present.

THE COURT: That is why I overruled the objection.

Q Did any of the three individuals, Howard, Zuber or Acton ever tell you that the company had produced no revenues?

A No, sir.

Q Did you ever see any literature on Pioneer Development Corporation?

A No, sir.

Q Did you ever see any filings with the Securities and Exchange Commission?

A No, sir.

Q Did you ever see any prospectuses?

A No, sir.

Q Did you ever see any materials whatsoever that disclosed what the company did and what its financial situation was?

A No, sir.

Q Mr. Grant, I show you Government's Exhibit 1W for identification and ask you if you can identify this document. I am referring specificaly to a letter which is attached to this document.

A Yes, sir, that is when I sent the 6900 shares to be transferred to my name.

Q Where did you send the letter?

A I think it was Nevada. I don't remember the address.

Q Did you send it through the mails?

A Yes, sir. I also enclosed a check for the transfer fee.

Q Was that in the amount of $17.50?

A Yes, sir.

Q Now, sir, I show you these certificates. Do these appear to be the certificates which you sent to the transfer agent at that time?

A Yes, sir.

Q Did you receive a return letter from the transfer

agent enclosing new shares?

A Yes, sir.

Q Does that appear on a copy of the transmittal letter that you received? Look at it closely.

A Yes,sir, this is the name it was in originally and they transferred it to my name.

Q You received this document in the mails? Is that correct?

A Yes, sir.

Q I show you Government's Exhibit 64 for identification and ask you if you can identify that.

A Yes, sir.

Q What is it?

A Pioneer Development Company made out to Allen Grant.

Q What are the documents? Stock certificates?

A Stock certificates, Pioneer Development.

Q Are these the stock certificates which you received from the transfer agent?

A Yes.

Q 6,000 shares?

A Yes, sir.

MR. WALKER: I offer them.

MR. DOYLE: No objection.

THE COURT: Received.

xx (Government's Exhibit 64 received in evidence.)

MR. WALKER: I have no further questions of this witness.

THE COURT: We will take our morning recess.

(Recess)

(Jury present.)

THE COURT: All right.

MR. DOYLE: I have no questions of Mr. Grant.

MR. GREENBERG: May I proceed?

CROSS EXAMINATION

BY MR. GREENBERG:

Q Good morning, Mr. Grant.

When Michael Gardner called you on or about January 9th, how long had you known him at that time, sir?

A A year or so.

Q What was your relationship with Mr. Gardner?

A We used to go to the same tailor together.

Q Have you ever done --

MR. DOYLE: Same what?

THE WITNESS: Tailor.

MR. DOYLE: Same tailor?

THE WITNESS: To have our suits made.

Q Have you had any business dealings with Mr. Gardner?

A Yes, he bought a fur coat from me.

Q Anything else?

A No.

Q Now, the stock certificates that you received

in exchange for the coats were the ones in the name of Jay Walker, is that right?

A Yes, sir.

Q And were you told that the certificates were actually the property of Mr. Acton?

A No, sir.

MR. GREENBERG: Your Honor, I want to make reference to an exhibit, Government's Exhibit No. 14, which has been received in evidence and read to the jury. I would like to make reference to it before the jury and paraphrase it so they will know what I am talking of.

This is a letter to Jay Walker dated November 10th, 1969, signed by Michael Clegg, in which Mr. Clegg, acting as president of Pioneer Development, acknowledged that certain shares of stock were issued in Mr. Walker's name in error.

Q Mr. Grant, I show you what has been marked Government's Exhibit No. 14 for identification and received.

Please look at that, sir. Did Mr. Zuber show you that document on that date, sir?

A No, sir.

Q And you were not told that the stock was actually the property of Mr. Acton?

A No, sir.

Q All right.

Now, when you were given the stock certificates, isn't it true, sir, that you called your broker to check on the price?

A Yes, sir.

Q Did your broker tell you that the stock was, in fact, selling for around $6 a share?

A Yes, sir.

Q So the value of the stock at that time was just about $42,000?

A Yes, sir.

Q The actual value of the coats was $15,000 you have testified.

A Yes, sir.

Q What would be your normal markup on a coat, about what per cent?

A About a third.

Q About 25 per cent?

A 25 to a third, depends on the situation.

Q So in this case your markup was approximately 300 per cent, is that right?

A Yes, sir.

Q And that would be about 20 times over your normal

markup, is that fair?

A Let me just do a little arithmetic. May I?

Well, actually it wasn't 300 per cent. About 200 per cent. Less than 200 per cent. 15,000 in relation --

Q Well, it's a matter of arithmetic.

A If it's a matter of arithmetic, let's get it straight.

Q I'm sorry. I was working with 15. I think you are right. It is closer to 200 per cent, sir.

A Less than that.

Q Now, let's see, if the option had been exercised at $10 a share, you would then have received $69,000 back, is that right?

A That's right.

Q And that would have been about a 450 per cent profit?

A It's all hypothetical. I got nothing back.

Q At the time that you made the transaction, you thought you were making a good deal, did you not, sir?

A Yes, sir, I would have.

Q And you tho ught you were going to make a profit on the transaction, is that right?

A Yes, sir. Again, it was hypothetical because

60 days --

Q Under the terms of the option, as I understand it, Mr. Zuber had the right to buy the stock back within 60 days at $10 a share, is that right?

A Yes, sir.

Q But he had no obligation to do so, did he?

A He had the option.

Q He had no obligation, though?

A I'm sorry, sir. It says exclusive --

MR. WALKER: I object.

THE COURT: Sustained.

A It says exclusive right --

MR. WALKER: Mr. Grant, an objection was sustained.

THE WITNESS: I'm sorry.

Q Now, with reference to the statements made by Mr. Zuber about the mine, isn't it true, sir, that they told you that the mine was about to go into operation?

A No, sir

Q Didn't they tell you they were waiting for some equipment before it would become operable?

A I don't know if they told me. Somebody told me that. I don't remember whom.

Q In fact, didn't Mr. Zuber say they were waiting for a piece of equipment that they needed to get the mine

into commercial production?

A I don't remember, sir.

Q But someone there had told you that they were waiting for a piece of equipment?

A Someone told me. I do not remember whom.

Q Did they tell you -- did Mr. Zuber tell you tnat Mr. Acton had invested several thousand dollars of his own money in the mine?

A No, sir.

Q Did they tell you Mr. Clegg had done that?

A No, sir.

Q They did not tell you anything to indicate that the price of the stock was being artificially raised, did they, sir?

A No, sir.

Q You never tried to sell -- you did try and sell the stock after 60 days?

A No, I did -- oh, yes, after 60 days, yes, sir.

Q But you found that you could not do so, is tht right?

A Pardon?

Q You found you could not do so, is that right?

A I was offered very little, pennies, as a matter of fact. I thought I'd stay with it.

Q Did you bring a lawsuit against anyone in this connection?

A No, sir.

Q I beg pardon?

A No, sir.

Q Would you wait until I finish my question so the reporter can get down what both of us said?

A All right.

Q Mr. Grant, please look again at Government's Exhibit 63 received in evidence, the receipt for the coats.

A Right.

Q Reflecting seven coats with a total value of $42,000.

A Right.

Q The price is indicated hereon are highly inflated, are they not, sir?

A I can't hear you.

Q The price is indicated herein are highly inflated, aren't they?

MR. WALKER: Objection; repetitive.

THE COURT: I think it is repetitive, Mr. Greenberg.

Q Did you represent to them that this was a fair

value for the coats, sir?

A We never went into it.

Q Well, in writing -- in putting the amount on this paper, that is what you intended to represent, isn't it?

A Well, the amounts are as stated.

Q You represented that as a fair value?

A They represent the prices I quote them, yes, sir.

Q There after, in acquiring this stock, in exchange for the coats, you used the mails, is that right?

A Used what?

Q You used the mails; you sent the stock certificates through the mail?

A Yes, sir. Transfer, you mean.

Q Are You aware, Mr. Grant, that you have just admitted to two elements of mail fraud?

MR. WALKER: Objection.

THE COURT: Sustained.

Q Has Mr. Walker told you that you would not be prosecuted in this case?

MR. WALKER: Objection.

THE COURT: Sustained.

Q Did Mr. Walker ever tell you you were a suspect in this case?

MR. WALKER: Objection.

THE COURT: Sustained.

MR. GREENBERG: No further questions, your Honor.

MR. NEWMAN: I have no questions, your Honor.

MR. DOYLE: Nothing, your Honor.

MR. WINOGRAD: Nothing.

MR WALKER: I have some redirect.

REDIRECT EXAMINATION

XX BY MR. WALKER:

Q Mr. Grant, you were asked by Mr. Greenberg about the markup on the coats, is that correct?

A Yes, sir.

Q Did you make any money on this deal yourself?

A I never got one nickel in return for anything here.

Q Now, as far as this 60-day option was concerned, when you received that, when you gave that option, did you feel that you were obliged not to --

MR. KIRSCHNER: Objection, your Honor.

THE COURT: Sustained.

Q You were asked on cross-examination whether or not you were told the certificates in the name of Jay Walker belonged to Acton and you said that you were not

told that, is that correct?

A No, sir.

Q Did you believe that that stock belonged to Mr. Zuber?

MR. KIRSCHNER: Objection.

THE COURT: Sustained as to form, right away. There is a wrong verb there.

MR. WALKER: Very well.

Q Were you led to believe that the stock --

MR. GREENBERG: Objection as to form, your Honor.

THE COURT: Sustained.

Q Was anything said, sir, which led you to believe that the stock --

MR. KIRSCHNER: Objection.

THE COURT: Sustained.

MR. WALKER: Very well.

Q Was anything said, sir, as to whose stock it was at that time?

MR. GREENBERG: Objection, asked and answered.

THE COURT: Overruled.

A Well, the name on the back, I said how come the name was Walker?

He said that's who the stock's name was in.

Q He said the stock was in the name of Jay Walker?

A Jay Walker, if I'm not mistaken.

Q Who said that?

A Mr. Zuber.

MR. WALKER: I have no further questions.

MR. KIRSCHNER: No further questions.

MR. DOYLE: Nothing further, your Honor.

THE COURT: All right.

You are excused.

(Witness excused.)

MR. SIFFERT: Your Honor, by stipulation with Mr. Pape, Government will offer Government's Exhibit 32-C in evidence.

MR. PAPE: No objection, your Honor.

THE COURT: Received.

(Government's Exhibit 32-C was received in evidence.)

MR. WALKER: The Government calls Don Shepherd.

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WILLIAM DON SHEPHERD, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Shepherd, directing your attention, sir, to approximately December of 1969, how were you employed?

A I was self-employed.

Q Sir, at that time were you a hundred per cent stockholder of a company called Pioneer Casualty?

A I was, sir.

Q And, sir, directing your attention to late December 1969, did you have a conversation with a man by the name of Mike Clegg in connection with a transaction?

A Yes.

Q And would you tell us, sir, what the proposed transaction was?

A Mr. Clegg had proposed to --

MR. DOYLE: Your Honor, if we are going into a conversation, can we have who else was present?

MR. WALKER: Very well.

Q Where was this conversation, sir?

A As I recollect, it was in my office in Houston,

Texas.

Q Who else was present?

A Just Mr. Clegg and myself.

Q And what was the conversation at that time?

A Mr. Clegg had proposed to Mr. Buls, president of Pionner Casualty --

Q Did Mr. Clegg talk to you?

A Mr. Clegg talked to me about a deal he proposed to Mr. Buls.

Q What did he say?

A Whereby he would trade 200,000 shares of Pioneer Development Company to Pioneer --

Q Pioneer Development Company stock?

A Stock to Pioneer Castualty Company in return for $600,000 worth of Pioneer Casualty Company surplus debentures.

Q And what was yout conversation with Mr. Clegg at that time?

A I asked Mr. Clegg what he proposed to do with these surplus debentures, that I didn't understand why he would want them, that they were not the normal type debenture that a corporation issues. These are specially designed debentures, the wording designed by the State Insurance Commission of Texas, and for a specific purpose.

Q And, sir, what did Mr. Clegg say?

A He said he understood that. I believe he had a copy of the wording and said that he had already talked with his banker and they had checked out Pioneer Casualty Company and they were going to loan him some money on these debentures if he could make this deal.

Q Now, did You discuss with Mr. Clegg the terms of the debenture at that time?

A The important points of it, yes, sir.

Q What did you say to him?

A I asked him if he understood what the debenture was, that it was simply a promise to pay at some date to bedetermined wholly by the board of directors of Pioneer Casualty Company and that it would only be payable when the board voted to pay it.

Q Did you tell him whether there was any obligation on the part of the board to vote this promise to pay?

A I'm sure I did. There is no obligation there designed in that way because the casualty company or anu casualty company does not have to show those as a liability against the company's assets. We footnote them in our statement, but they are not a direct liability of the company.

THE COURT: I take it there was no other

relationship than the one you're talking about between Pioneer Casualty and Pioneer Development?

THE WITNESS: No, sir, it was a very unfortunate coincidence.

THE COURT: Independent company?

THE WITNESS: Yes, sir.

Q Do you know whether Clegg was ever successful in raising money, using these debentures?

A I don't think he was. I do not know that, sir, but I don't think he was.

Q Mr. Shepherd, is this a copy of the debenture, the one contained on Government's Exhibit 10 in evidence, 10-A in evidence?

A Yes, sir.

[illegible] just like to read one sentence from this debenture.

"The principal amount of this debenture shall not constitute a liability of Pioneer Casualty Company or a claim against any of its funds or assets except as herein provided and it shall be payable only upon affirmative vote of its board of directors."

Q Now, Mr. Shepherd, have you yourself ever been convicted of a crime?

A Yes, sir.

Q How many times?

A One time, sir.

Q And was that the crime of mail fraud?

A Violation of the Mail Fraud Act, yes, sir.

Q Violation of the Mail Fraud Act?

A Yes, sir.

Q Is that case on appeal right now?

A Yes, sir.

MR. WALKER: I have no further questio ns of this witness.

MR. DOYLE: Your Honor, there is a problem here because we just got the 3500 material before he took the stand and it consists of this much (indicating), so that I can't represent it is totally irrelevant because I haven't read it.

MR. WALKER: Your Honor, his direct testimony was extremely brief.

THE COURT: I just heard, so you don't need to tell me about it.

MR. WALKER: I can point out the portions of the 3500 material that relate to the direct testimony and then he can be made available for the defense if they wish to call him for any --

THE COURT: Well, let's take him off the stand

now, defer cross-examination.

You will remain, Mr. Shepherd, subject to recall.

THE WITNESS: Yes, sir.

(Witness temporarily excused.)

THE COURT: Take the next witness.

MR. WALKER: Very well. Gus Kostos.

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G U S M I C H A E L K O S T O S, called as a witness by the Government, being first duly sworn, testified as follows:

MR. WALKER: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Kostos, how are you presently employed, sir?

A I am employed as a registered representative with Shearson, Hayden Stone.

Q Mr. Kostos, would you speak slowly and speak a little more loudly than you areused to doing so everyone can hear you?

Directing your attention, sir, to October of 1969, were you employed at Orvis Brothers?

A Yes, sir.

Q Were you a registered representative there?

A Yes, sir.

Q Did you meet Alan Segal in late August or early September of 1969?

A Thereabouts, yes, sir.

Q Did there come a time, sir, when Mr. Segal caused -- well, directing your attention to October 24th or thereabouts, was there a delivery of stock on or about that day?

A There was a delivery of stock, yes, sir.

Q What stock was it?

A Pioneer Development.

Q And who delivered the stock to Orvis?

A My memory is not fresh there. It was either Mr. Segal or one of his office help.

Q Do you know his office help?

A The ones I knew were Francine Zahl and Gary Torres.

Q Was this stock put into an account in Mr. Segal's name at Orvis?

A Yes, sir.

Q 20,000 shares?

A Yes, sir.

Q Subsequent to that, sir, did Mr. Segal sell this stock?

A Yes, sir.

Q I show you Government's Exhibit 110 for identification and ask you, sir, first of all, is this an account statement in the name of Alan Segal?

A Yes, it is.

Q And does it reflect the settlement date in the left-hand column?

A Yes, sir.

Q Does it show, sir, a receipt of approximately 20,000 shares of Pioneer Development Corporation on October 31st?

A It shows exactly 20,000 shares deposited.

Q Now, would that be on the 31st or is that the settlement date? Would it have actually been delivered on some other date?

A It would have been delivered, I would approximate, about a week or ten days before that and entered into the account, the bookkeeping date of October 31st, which as opposed to a settlement date on transactions.

MR. WALKER: I offer this statement.

MR. DOYLE: No objection.

THE COURT: Received.

(Government's Exhibit 110 was received in evidence.)

xx

Q Mr. Kostos, thereafter did Mr. Segal bring accounts of individuals to Orvis Brothers?

A Yes, sir.

Q And can you remember the names of those individuals?

A Hyman Freedman, Nat Farber, Bonnie Kroll, Jack McCarthy.

Q Was an account opened in the name of Francine Zahl?

A Francine Zahl.

Q Now, with respect to the Zahl account, I show you Government's Exhibit 108 for identification and ask if you can identify this as the statement?

A Yes, sir.

MR. WALKER: Any objection?

MR. DOYLE: No.

THE COURT: Received.

(Government's Exhibit 108 was received in evidence.)

xx Q Does this statement, sir, reflect a single sale of Pioneer Development Corporation, settlement date November 10th, 1969, 1300 shares?

A 1300 shares, November 10th, a sale at -- I can't make that out too well -- yes, it represents a sale on

settlement date of November 10th of 1300 shares of Pioneer Development.

MR. WALKER: May the record reflect that the amount on the certificate is $10,837.76.

Q Now, following this time when these various accounts were opened, did Mr. Segal instruct you to sell stock from his account into these other accounts?

A Yes, sir.

Q Do you recall, sir, approximately how many shares were crossed -- would the term "cross" be appropriate?

A Yes.

Q -- were crossed at Orvis Brothers in the Segal account into one of these other accounts, that is, Farber, Kroll, McCarthy or Freedman?

A The exact number of shares?

Q Yes. If I showed you a document --

A Yes, would you, please?

Q Would that help you?

A Yes.

Q Was there also another account by the name of Edson Structures?

A Yes.

Q I show you this schedule, sir, and ask you if

check marks reflect crosses into other accounts from Segal?

A The check marks do, yes.

Q Check marks do?

A Yes.

MR. WALKER: May we mark this Government's Exhibit 152?

MR. DOYLE: Is it an Orvis Brothers schedule?

MR. WALKER: No. I won't offer it.

MR. DOYLE: No, it's all right. Who prepared it?

MR. WALKER: It was prepared by an SEC investigator.

MR. DOYLE: No objection, your Honor.

THE COURT: Received.

(Government's Exhibit 152 was received in evidence.)

xx Q Does it also reflect certain sales out of the Segal account into the market, the general market?

A Yes, at the bottom.

Q That is the bottom portion, is that correct?

A The bottom portion.

Q Sir, with respect to any of these transactions, did you speak to the individuals who were purchasing the

stock?

A Yes.

Q And did you do that in each case?

A Yes.

Q Now, was the result of these transactions that immediately cash would be generated?

A Well, seven days, settlement date, cash would be generated, yes.

Q Cash would be generated in the Segal account, is that correct?

A Settlement date, yes.

Q And, sir, did you sign a series of letters of instruction for deposits to be made at the Republic National Bank of the proceeds from the sales of these stocks?

A I wouldn't sign letters. I may initial them. Could I see a couple?

Q I show you Government's Exhibit 46 in evidence. Is that your signature?

A Yes, right.

Q 47 in evidence, is that your signature?

A Yes, right.

Q 52 in evidence, is that your signature?

A Yes.

Q 53 in evidence, is that your signature?

A Yes.

Q Did you have any conversations with Mr. Segal or with the individuals whom you have named to the effect that these individuals were buying for their own account?

A Yes.

MR. DOYLE: Your Honor, I do object to the question. I realize it has already been answered, but could we have what the conversation was, who he spoke to?

THE COURT: Yes.

Q If you can recall, sir, can you tell us whether or not, just yes or no, whether or not you had a conversation with Nat Farber concerning his purchase of stock?

A Yes.

Q Was there anything said, sir, as to whose account it was being purchased for?

A Nat Farber.

Q Who said that?

A Nat Farber and Alan Segal.

MR. DOYLE: Could we get the conversation in the witness' own words? Mr. Walker is really spelling out the entire conversation. I would like to hear the witness' version of it.

MR. WALKER: Very well.

THE COURT: It would help.

Q Do you recall, sir, at the time these accounts were opened, specifically, the Nat Farber account, which reflects a purchase settlement date of December 5, 1969, and a purchase of 2,000 shares of Pioneer Development, did you have a conversation with Mr. Farber about that time?

A Yes.

THE COURT: What did he say and what did you say?

THE WITNESS: Well, not exactly. The general trend is that he was buying.

THE COURT: Tell us as best you can remember what he said.

THE WITNESS: That he wanted to buy a thousand or 2,000 shares of Pioneer Development. The exact figure I don't remember. And he will be buying it out of Allen Segal's account.

Q Did you have a conversation with Mr. Segal during that period of time?

A Yes.

Q What did he say?

A That he would be crossing so many shares out of his account into Mr. Farber's.

Q Did you have a conversation with Mr. Freedman on or about the beginning of November concerning the

transaction of a thousand shares of Pioneer Development in his account?

A Yes.

Q What was the conversation?

A The conversation would be the same.

Q What?

A The conversation would be the same, generally the same. He would buy so many shares from Alan Segal.

Q Did you have a conversation with a Bonnie Kroll during this period of time?

A Yes.

Q What did she say?

A Approximately the same thing.

Q Did you have a conversation with Jack McCarthy?

A Yes, sir.

Q What was your conversation with Mr. McCarthy?

A Approximately the same thing. He would be buying so many shares out of Mr. Segal's account.

Q Did Mr. Segal speak to you about these various trades?

A Yes.

Q What did he say?

A That he was selling so many shares out of his account to these respective individuals.

Q Was the same true for Edson Structures?

A Yes, sir.

MR. WALKER: That is all.

MR. DOYLE: We have the same problem with this witness, material that we got this morning.

THE COURT: You are excused subject to recall. You will have to remain.

THE WITNESS: Thank you.

(Witness temporarily excused.)

MR. WALKER: Is Mr. Aynes here?

THE CLERK: No.

MR. WALKER: Mr. Nerenberg.

H O W A R D N E R E N B E R G, a witness called on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Nerenberg, how are you presently employed?

A I am self-employed.

Q What is your occupation?

A I run a knitwear production service.

Q Sir, did there come a time, directing your attention to October of 1969, when you purchased a stock,

Pioneer Development Corporation?

A Yes, I did.

Q You first purchased Pioneer Development Corporation stock on approximately November 11, 1969?

A Yes.

Q Did you have a conversation with any individual prior to purchasing the Pioneer Development stock, without telling us what the conversation was? Would you tell us just simply whether you did.

A Yes, I did.

Q Who was that individual?

A Robert Meyer.

MR. WALKER: I would offer what Mr. Meyers told him about it.

MR. DOYLE: Objection. There is no foundation for any alleged conversation.

THE COURT: I will allow it. Overruled.

Q What was the conversation that you had with Mr. Meyer at that time?

A Mr. Meyer told me in reference to Pioneer that he had heard about the stock on very good information and that it might be the type of thing that I would like to buy, that he was buying some.

Q Do you recall anything further that he said

at that time about the stock?

A Yes, he said that the person who had given him the information had pretty close contact with the company directly or somebody who had contact with the company and that this stock should do very well, we should be able to make a lot of money with it.

Q Did he say who had recommended the stock to him?

A I believe it was a Mr. Berman that he had mentioned.

MR. DOYLE: Your Honor, I would like to move to strike the testimony at this time.

THE COURT: Would you come up.

(At the side bar.)

THE COURT: I trusted you would lead me into a situation with a co-conspirator. He obviously isn't one.

MR. WALKER: It is the government's position that a conversation by an innocent agent is just as admissible, not for the truth of the contents, but to show why this person bought.

THE COURT: How do you establish that he is an agent of anybody?

MR. WALKER: When a tout occurs in stock it is intended that the word will spread and that will create buying.

THE COURT: The chain is what I am trying to get at.

mmb6 Nerenberg-direct

MR. WALKER: Your Honor, the chain has been established as going from Levine to Berman to Meyer, Eddie Levine, a co-conspirator, to Berman, to Meyer, to this man.

THE COURT: All right.

(In open court.)

Q Now, following that conversation did you effect purchases in Pioneer yourself?

A Yes, I did.

Q I show you this document. It's a bit difficult to read. But is this a microfilm of your account at C.B. Richard, Ellis & Company?

A Yes.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

xx (Government's Exhibit 115 received in evidence.)

MR. DOYLE: I would like to reserve the relevancy objection I made at the side bar. Let me assert the objection and have your Honor rule on it. Is it overruled?

THE COURT: Yes, the objection is overruled. I thought you understood that.

Q Mr. Nerenberg, did you purchase 500 shares on November 11th at 8-7/8 for $4,516.90?

A Yes, I did.

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Q Did you purchase 300 on November 13th, 300 shares on November 13th at $9 a share for $2,748?

A Yes.

Q Did you purchase 200 shares on December 18th at $8 a share, with a total price of 1,630?

A Yes, I have.

Q So was your total cost, sir, $1,009.90?

A Yes. There was one more purchase after that, on December 29th.

Q On what day?

A December 29th, to make up the total.

Q How much was that?

A 200 shares for a total purchase of $1,125.

Q That was at $5 a share?

A 5-1/2.

Q Now, sir, did there come a time when you had a further conversation with Robert Meyer after you had purchased stock initially?

A Yes.

Q What was that conversation?

A Well, the stock had started falling and I had questioned whether Bob had known anything more about the stock or heard anything about it, and at the time he said no, but he had set up a meeting with the president

of the company.

Q Some time shortly thereafter did you have a further conversation with him?

A Yes, I did.

Q What was that conversation?

A It was in reference to his meeting with the president of the company, and at that time he said that he had met with the president of the company, he had been assured there was nothing wrong with the stock, we would all make a lot of money with it, the stock would be fine, and Bob's comment at that time was that he had not been convinced, but that is what the man had said.

Q Sir, as a result of that conversation did you effect any further purchases in the stock?

A I think this is when I bought that last 200 shares that we have just mentioned.

Q Sir, as a result of that conversation did you sell any of that stock?

A No, I did not sell any.

Q Sir, do you still have the stock today?

A Yes, I do.

Q Have you tried to sell it since that period of time?

A I questioned my broker. He said there is absolutely no market in it.

Q Sir, at any time did you receive any financial information or other literature from either the company or any other individual concerning the stock?

A No, I did not.

Q Did you receive any SEC prospectuses or filings in connection with the purchase of the stock?

A No.

Q Sir, were you ever informed by anyone that the company had no revenues?

A No, I was not.

Q Were you ever informed by anyone that the company had no commercial production?

A No, I was not.

Q Sir, did you receive confirmations in respect to each of the purchases of stock from C.B. Richard, Ellis & Company?

A Yes.

Q Did you receive those in the mail?

A Yes, I did.

Q And at that time, sir, was your address at 410 East 40th Street, New York, New York?

A No, it is 110 West 40th.

Q 110 West 40th Street, New York, New York?

A Yes.

Q Were the confirmations sent to that address?

A Yes, they were.

MR. WALKER: I have no further questions of this witness.

MR. DOYLE: No questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. WALKER: I call Doniel Aymes.

D O N I E L A Y M E S, a witness called on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Aymes, how are you presently employed?

A I am president of the Alphabex Corporation.

Q What is the business of Alphabex Corporation?

A We are a contract job shop.

Q Now, sir, do you know Alan Segal?

A Yes, I do.

Q How long have you known Mr. Segal?

A Since 1967, '68.

Q Sir, did there come a time when Mr. Segal spoke to you about a stock called Pioneer Development Corporation?

A Yes, sir.

Q Sir, can you tell us approximately when that occurred? I show you a statement of Walston & Company, a computer run which bears a settlement date of October 7, 1969, or thereabouts. I believe it's a settlement date.

Does that refresh your recollection?

A Yes, it does.

Q Prior to the transaction in Pioneer of a thousand shares did you have a conversation with Mr. Segal?

A Yes.

Q And what was your conversation with Mr. Segal at that time?

A That there would be a stock forthcoming in the very near future for me to buy.

Q Sir, do you recall how many shares were purchased in your name?

A May I see the document?

Q Yes.

How many?

A I initially was told to purchase 1,000, then a a day or two later I was told to purchase another thousand, and then I think at the end of that week or the following week I was told to purchase for Mr. Segal's account 2,000.

Q When you say for Mr. Segal's account, what do

you mean? Did you have a conversation with Mr. Segal on that score?

A Right, that I should buy the stock in my name for him and he would reimburse me with the money.

Q Now, sir, did you follow his recommendation as to the first two 1,000-share purchases?

A Yes.

Q Sir, did you purchase a thousand shares of Pioneer Development at $8.50 a share on or about November 7th?

A That is correct.

Q Did you purchase another thousand shares of Pioneer Development at 8-3/4 at or about November 10th?

A That is correct.

Q Were those shares purchased for your own account?

A For my own account.

Q Did you eventually sell those shares?

A No, I still hold them.

Q Do you know what their value is today?

A Worthless.

Q With respect to the final 2,000 shares that were purchased in your name, will you tell us, sir, whether you had a conversation with Mr. Segal? As best you can recall.

A I had more than one conversation. The initial

mmh13 Aymes-direct

conversation I believe was in mid-November, and it was in his office on, I believe, 61st Street.

Q Do you remember who else was present, aside from Mr. Segal and yourself?

A To the best of my knowledge I think Stu Schiffman.

Q What was the conversation at that time? Who said what?

A I believe Mr. Segal indicated to me to purchase these shares in my name through my broker and that he would pay me within the four days as required, which I indicated had to be done for those shares on Pioneer.

Q Was there any discussion as to why he was doing this?

A Yes.

Q What did he say?

A That the stock would have a meteoric rise in the near future.

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Q Did you pay for the 2,000 shares that were purchased in your name for Mr. Segal?

A No, I did not.

Q What happened at the end of the four days or five days, on the settlement date?

A Mr. Segal did not come up with the money. I then indicated the problem to my broker, which was Walston

& Company, and I hadthem call and talk to Mr. Segal.

Q Did you talk to Mr. Segal?

A Yes, I did in the same conversation Mr. Segal indicated to my broker, Russell La Condra, that he would take care of it, and a check would be forthcoming. It took us until about the 10th or 12th of December and no funds were forthcoming. Walston pressed for payment. Mr. Segal gave us a check, and the check bounced. Walston then came back to me demanding payment for those 2,000 shares, and we again got hold of Mr. Segal, and I believe we received a promise for payment again, and a second check was issued just prior to Christmas, about the 20th or the 21st, and Walston indicated to me while I was on vacation -- they got hold of me -- that the check had bounced. I was up at the Concord at that particular time, and I believe I had a running conversation for four days on my vacation with Mr. Segal, promises would be made for payment of these 2,000 shares. After I came off vacation, Walston declared to me and Mr. Segal that they would take punitive action and they would get hold of the District Attorney in New York County, make sure that the thing had been taken care of. At this particular point I think it took us to about the 15th of January -- I'm not sure of my dates -- and I told Mr. La Condra and Walston I was washing my hands of it,

they could do as they damn pleased with the shares of stock, they could go after Mr. Segal in any way, that it was not for my account, and they acknowledged the fact that they bought it for me, but Mr. Segal in his conversation with Mr. La Condra indicated that he was the owner of those shares of stock and would pay for them. I think in a matter of a week or two or three later, as Walston pursued punitive measures, they finally settled with Mr. Segal on receipt of a certified check from him. I never saw it, but at that particular point Walston cleared it off.

Q Now, sir, with respect to the 2,000 shares that you purchased, did you ever receive any SEC approved financial statements or prospectuses or registration statements in connection with that stock?

A No, sir.

MR. WALKER: I have no further questions.

MR. DOYLE: Mr. Heffernan will conduct the cross-examination.

CROSS EXAMINATION

BY MR. HEFFERNAN:

Q Good afternoon, Mr. Aymes. My name is James Heffernan. I represent Alan Segal.

Sir, prior to your buying of the Pioneer stock, you and Mr. Segal had had prior relationships, hadn't you?

A That is correct.

Q You were a partner of his in a hotel? Is that correct, sir?

A We still are.

Q Wasn't there a time, sir, in 1969 when Mr. Segal asked you to go out to that hotel and see just what was going on out there?

MR. WALKER: Objection. It seems irrelevant.

THE COURT: Sustained.

Q Mr. Aymes, when was it that you were at the Concord?

A Christmas of 1969.

Q How long were you there, sir?

A Five, six days.

Q Were you there through New Year's? Do you recall?

A I believe so.

Q Was it your understanding that it was after that time that Walton went to the District Attorney about this problem that you have testified to?

A I'm not sure, but I think so.

Q Sir, I believe it was your testimony that you never saw the check, the certified check, that Mr. Segal directed to Walston?

A That is correct.

Q Do you know if Walston has an office on 43rd Street?

A No, I do not.

Q Do you know the amount that Walston was asking from Mr. Segal?

A You can refresh my memory.

Q Would you look at the account record on Walston?

A Yes, it would be there exactly.

Q If I show you Government's Exhibit 117 in evidence, would that be approximately $16,000, sir, that they were looking for?

A That is correct, $16,000.

Q That would be payable to Walston & Company?

A That is correct.

MR. HEFFERNAN: Your Honor, may I mark this for identification.

(Defendant Segal's Exhibit K marked for identification.)

Q Mr. Aymes, can you identify that as a type of cash receipt record that Walston issued?

MR. WALKER: We have no objection as to its competency.

THE COURT: Received.

(Defendant Segal's Exhibit K received in evidence.)

MR. HEFFERNAN: May I read this to the jury?

THE COURT: Yes.

(Mr. Heffernan reads from Defendant Segal's Exhibit K to the jury.)

MR. HEFFERNAN: No further questions.

THE COURT: You are excused.

THE WITNESS: Thank you.

(Witness excused)

MR. WALKER: Your Honor, at this time I believe the other witnesses are available for cross-examination.

THE COURT: We will take a short recess while counsel have a chance to look at their 3500 material with respect to those two other witnesses. Then we will recall them for cross-examination.

MR. DOYLE: How much time can we have?

THE COURT: How much time do you need?

MR. DOYLE: We will do our best, your Honor.

(Recess)

(Jury present.)

THE COURT: What about Shepherd?

MR. DOYLE: No cross-examination by anybody, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Kostos, in connection with the crosses, the transactions that you have described as crosses in your direct testimony, before those transactions were executed, did you look into the question of whether there were any violations in connection with them?

MR. WALKER: Objection, your Honor.

THE COURT: Sustained.

Q Did you consult with anyone in your firm regarding the question of whether these were regular. ordinary transactions, in the ordinary course of business that your firm would execute?

MR. WALKER: Objection.

THE COURT: Sustained.

Why can't can't you put the question directly?

Were these crosses an ordinary transaction?

Q Were they ordinary transactions?

A Yes.

Q The answer is yes?

A Yes

Q Thank you.

And did you know at the time of the transactions that you described in your direct testimony that Francine Zahl was Mr. Segal's secretary?

A Yes.

Q And was the stock checked with the transfer agent before the transactions were executed?

A I presume so. They were turned over to your --

MR. WALKER: Objection.

Q Just tell us what your business practice is in that connection of Orvis Brothers?

MR. WALKER: Objection, your Honor.

THE COURT: Modify your question. Reframe it again, would you?

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MR. DOYLE: Yes.

Q At that time, sir, at the time of these transactions, what was the business operating procedure of Orvis Brothers in connection with checking stock with the transfer agent before trading it?

MR. WALKER: Objection, your Honor. There is no showing that there was a check in this particular case and if this witness doesn't have particular knowledge of it,

we would object to it.

THE COURT: Overruled.

Q Do you understand the question, sir?

A Yes. Just give it to me again because --

THE COURT: What did you do to check with the trahsfer agent on a transaction in the normal ordinary situation?

THE WITNESS: Normal situation, before a stock is deposited into the account, it is presumably cleared through the transfer agent for sale.

Q And that was the procedure that was in effect at the time that these trades were effected?

A That was the procedure that was in effect, yes.

MR. DOYLE: Thank you.

One moment, your Honor.

(Pause.)

Q Sir, at the time of the transactions that you testified about, was Orvis Brothers a member of the New York Stock Exchange?

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A Yes.

Q Was it a member of the American Stock Exchange?

A Yes.

Q Was it a member of the National Association of Securities Dealers?

A Yes.

Q And was it registered with the Securities and Exchange Commission?

A Yes.

MR. DOYLE: Thank you.

No further questions.

MR. WALKER: One question.

REDIRECT EXAMINATION

BY MR. WALKER:

Q Is Orvis brothers still in business today?

A No, sir.

Q What happened to it?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained.

MR. DOYLE: Move it be stricken.

THE COURT: Yes, strike the question.

MR. WALKER: No further questions.

THE COURT: You're excused.

(Witness excused.)

THE COURT: All right, we will adjourn now until Monday morning at 10 o'clock. Have a nice weekend. Don't talk about the case. Don't let anybody talk about it with you.

I report to you that we are making very good

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progress here and I don't like to predict when a case will end because only the good Lord knows that, but we are getting everyone's cooperation to that end, to getting this case to you as fast as we can. That is all any of can do.

Please be on time.

(Jury left the courtroom.)

THE COURT: Mr. Walker, who are these other two witnesses? What is their testimony?

MR. WALKER: Mr. Siffert.

MR. SIFFERT: Both are victims, your Honor, and one is coming from Wichita, Kansas and could not get on a plane before Sunday, and the other one was from Massachusetts or Rhode Island, with a similar problem.

THE COURT: Are they substantive counts?

MR. SIFFERT: I believe.

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MR. WALKER: Yes.

THE COURT: Don't you think you have got enough to maybe forego a couple?

MR. SIFFERT: We will consider that, your Honor, and if we don't have to call them, we will not.

THE COURT: Well, I would like to know now.

MR. WALKER: Our present intention is to call them. We expect them to be very brief and they won't be

any longer than these witnesses who testified today.

THE COURT: Is there any 3500 material with respect to either one?

MR. SIFFERT: I will turn that over upon conclusion of today, your Honor.

THE COURT: This is the conclusion of today.

MR. WALKER: We are meeting with counsel this weekend, your Honor, to straighten out the Bruton problem hopefully between counsel so that won't delay the trial at all.

MR. DOYLE: Your Honor, is there any reason why we can't get the 3500 material this afternoon?

MR. WALKER: No; we are looking for it now.

THE COURT: No, I would like to keep you waiting for your lunch as well, not that it is your fault. I must say to the defense counsel youhave been splendidly cooperative in this case, every one of you.

MR. NEWMAN: I apologize. You gave me away this morning. I thought I was ten minutes early. My watch said 10 to 10 and it was 10 after. I'm sorry.

MR. SIFFERT: May the record reflect I am now turning over the 3500 material as to the two prospective witnesses.

THE COURT: What I mainly wanted to read the

transcript for -- what is the date --

MR. DOYLE: It was the wednesday before the start of the trial.

THE COURT: No, the date of the event, conviction?

MR. DOYLE: The most recent one, your Honor, that we have to concern ourselves with was February 2nd, 1970.

MR. WALKER: Right.

MR. DOYLE: That was --

MR. WALKER: That is a stolen bond case.

MR. DOYLE: That was the case involving stolen securities in which Mr. Segal had been th main Government witness.

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MR. WALKER: He received a sentence of seven years suspended for five years.

THE COURT: Others beyond that?

MR. DOYLE: Prior to that, your Honor, yes, there was a 1966 forged instrumentation and then there was a 1963 violation of an injunction and one other case in 959 -- I forget what that was at the moment. All of this was brought out on cross-examination of Mr. Segal when he was a Government witness, and the Government vouched for his credibility in that case.

THE COURT: What else is in the Government's

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case here?

MR. WALKER: Your Honor, there is the charts, essentially the charts.

THE COURT: Charts are just a compilation.

MR. WALKER: Two or three victim witnesses and essentially that's it.

THE COURT: Nothing that is going to substantially alter the state of the proof at this point, I take it?

MR. WALKER: That's true.

THE COURT: All right, Mr. Doyle, I will preclude the Government from going into these earlier convictions unless you open the door on direct.

MR. DOYLE: Yes, your Honor.

MR. WALKER: Your Honor, there is a Mr. Schleger who is also a very brief witness and will not take more than a few minutes. I will turn over his 3500 material.

THE COURT: All right.

Have a good weekend.

(Adjourned to Monday, December 9, 1974, at 10.00 o'c lock a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Robert Meyer	723	726		
Robert Kellibe	730	739	741	
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Robert W. Tobias	758			
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William Don Shepherd	793			
Gus Michael Kostos	798	824		
Howard Nerenberg	810			
Daniel Aymes	815	820		

EXHIBIT INDEX

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28G, 28F		726
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27D, 27G		761

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EXHIBIT INDEX

Government	Identification	In Evidence
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32-C		792
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Defendant Segal

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UNITED STATES OF AMERICA
vs.
HOWARD FINKELSTEIN, et al.

December 9, 1974,
10:10 A.M.

(Trial continued)

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(Jury not present.)

MR. WALKER: Your Honor, before the jury is brought in, it might be appropriate in order to expedite things if there are any objections, we had a conference yesterday concerning the admissions that the government proposes to offer, and the government has narrowed them down to the barest minimum, and we have, I think, an essential agreement on them.

However, as I recall, there were certain objections raised yesterday. I can cover these admissions very briefly to see whether or not there are any objections that are going to be raised at this time.

THE COURT: All right, go ahead.

MR. WALKER: Very well, your Honor.

With respect to Howard Finkelstein, Mr. Finkelstein testified in the grand jury as follows, and we intended to offer this, in substance:

"Did Mr. Segal complain to you at that time

(referring to a meeting prior to the Reno meeting) that a certain stock, Pioneer Development Corporation, had been sold in breach of an agreement with him?

"A Yes, sir.

"Q And did he explain to you that he controlled the market in that stock and that some people out west had sold the stock and hurt the market as a result of that?

"A Yes, sir."

Now, there were objections raised by Mr. Doyle because Mr. Segals name was mentioned. As a result, I have a stipulation, in substance, that Mr. Newman agrees to, and it as follows:

On 8/13/74, Howard Finkelstein testified before the grand jury, in subtance:

1. That he was told that a certain stock, Pioneer Development Corporation, had been sold in breach of an agreement; and

2. That prior to going to Reno for the meeting at the Holiday Inn, he was told that the market in that stock was controlled and that some people out west had sold the stock and hurt the market as a result of that.

THE COURT: And you object to that, Mr. Doyle, on the obvious ground that anybody but a nitwit would infer that it was Segal.

MR. DOYLE: Precisely, your Honor.

THE COURT: Bruton out.

MR. WALKER: Your Honor, the next offer is -- and I am offering this, even though Mr. Zuber's name is mentioned, because I am going to offer Zuber's statement that is substantially the same:

"Q I believe you testified last time that shortly following this meeting (referring to the Reno meeting) you received $2,500 in cash from Zuber.

"A That is correct.

"Q Did Zuber tell you that this is money that had been recovered from McKibbon?

"A Yes.

"Q Did he give you this money in Las Vegas?

"A Yes, he did.

"Q Did he tell you that he was keeping $2,500?

"A Yes, he did."

And in connection with that, the government proposes to offer Zuber's statement that the meeting resulted in Zuber receiving 4,100 shares of Pioneer and $18,000 from an unidentified spokesman for McKibbon.

The 18,000 which was received in two payments, one in Los Angeles, one in Reno, was made in cash and cashier's checks. For his efforts and expenses Zuber

retained 5,000 for himself.

THE COURT: I'm sorry, I have to look at them both. I think this would be quicker for me to read them.

MR. WALKER: Very well, your Honor.

THE COURT: The one as to which there is least objection let me read.

MR. WALKER: Very well, your Honor.. The government is going to offer both statements and therefore claims there is no Bruton problem.

THE COURT: All right.

MR. WALKER: It is the last paragraph on this Zuber statement which relates to that entire --

THE COURT: Why do you say there is no Bruton problem merely because you offer both statements?

MR. WALKER: Because, your Honor, there are cases in the Second Circuit that say that if two defendants, in essence, make the same admission, that both statements may come in.

(Pause.)

THE COURT: All right, I will hear you.

MR. KIRSCHNER: Your Honor, first of all, we would object to that because they don't dovetail. There is talk of 2,500 and talk of 5,000 to begin with, we feel that it is a violation of the Bruton rule and in addition

to that we are going to move, which we have already done, to suppress Mr. Zuber's statement on the grounds that there was insufficient warnings, and that appears on the face of the statement itself.

MR. WALKER: Your Honor, I am making that man

b2 available, the man who administered the warnings.

MR. KIRSCHNER: It seems to us it is Bruton.

MR. WALKER: May I be heard, your Honor?

THE COURT: What about the warnings? I am checking it for warnings. Nobody has raised that point until now, or at least I don't recall it.

MR. WALKER: Your Honor, first of all, I have a witness who will testify as to what was actually said because--

THE COURT: Here is a memorandum in which he says something. Let me see -- advised of his constitutional rights.

Well, on that representation, you say Bruton is still involved?

MR. KIRSCHNER: Yes, your Honor, that is my understanding.

MR. WALKER: May I be heard?

THE COURT: I take it the part you have got stricken here you are not going to offer?

MR. WALKER: The part that I have stricken I do not intend to offer, just the rest of that front page.

THE COURT: I don't think that is a Bruton problem. I think they tend to cancel each other out. I think your argument goes not so much to Bruton as to the weight to be given to it by the jury, so I overrule you.

MR. WALKER: May I have the statements?

THE COURT: I hope you have some cleaner copies than just this crossed out --

MR. WALKER: I have agreed with counsel that I may read to the jury.

MR. KIRSCHNER: We have not agreed to that yet, your Honor.

THE COURT: I want you to clean those up because juries have a way of asking for exhibits.

MR. WALKER: Very well, your Honor. I will make sure of that.

THE COURT: Redact them, physically redact them. That is what I ask you to do.

MR. WALKER: Yes, your Honor.

Your Honor, with regard to Mr. Scardino, the government intends to offer the following, which I believe I have cleared with counsel completely:

"Q Apart from" --

MR. PAPE: Your Honor, we can save--

THE COURT: I would gather from a nod from his head it isn't cleared.

MR. PAPE: If we may save some time right now, I discussed with my client this morning the circumstances involving his first testimony before the grand jury. I think it clear from the face of that testimony that Mr. Scardino requested an opportunity to step outside and call his attorney in Houston. He had taken the Fifth Amendment at an SEC hearing in 1970. When he was called up in New York to testify before the grand jury, prior to testifying, he requested an opportunity to call his attorney, stating on the record that he did not know he was going to be requested to testify.

He stepped outside to call his attorney. After making that request, Mr. Walker dissuaded him from making that telephone call.

On these grounds I would move that all of Mr. Scardino's grand jury testimony be suppressed.

MR. WALKER: Your Honor --

MR. PAPE: I am willing to offer proof on that, your Honor.

MR. WALKER: Your Honor, I would be glad to have a hearing on that subject. It is a fact that Mr. Scardino did step outside the grand jury room, and when I met him outside the grand jury room I asked him what his concern was. He said to me that his concern -- I'm reading from the testimony as put on the record later on in the grand jury -- that he might not have a firm recollection of all the events that he might be asked about, and I wanted to know whether I should proceed, in any event, and Mr. Scardino said, "Yes, that's correct. In other words, it has been four and a half years and I know at the time I was involved I was worried about my business and any other development. All I can give you is what I best recollect."

Then I told him that if he gave us his best recollection and told the truth as best he knew how he would not have to worry about the consequences of perjury. That was the essence of our conversation, and at that point he made clear that he was willing to continue. I told him that he didn't have to. I advised him fully of his rights.

THE COURT: Did he say that he wanted to call his lawyer?

MR. WALKER: Yes.

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THE COURT: Did you allow him to call his lawyer?

MR. WALKER: He went out and started to call his lawyer.

THE COURT: Did you talk him out of it for whatever reason?

MR. WALKER: I don't think so.

THE COURT: Did you dissuade him in any way?

MR. WALKER: I don't know what his attitude was.

THE COURT: He said he wanted to call his lawyer. He did not call his lawyer?

MR. WALKER: I don't know whether he called his lawyer or not, your Honor. He was on the phone.

MR. PAPE: Once the man requested to talk to his lawyer the Government should not have counseled him concerning the effects of his testimony until he had called his lawyer.

MR. WALKER: Your Honor, this man was fully advised of his rights and indicated to me that he wished to continue, whether or not he called his lawyer, and he testified in the grand jury.

THE COURT: It seems to me you got a shade of a Miranda problem. Escobedo said, "My lawyer is outside."

MR. WALKER: Your Honor, I think that the answer

if I could read from this, if I could read the grand jury testimony of this witness, I think that that establishes the record in this case.

THE COURT: All right.

MR. WALKER: July 9, 1974 --

THE COURT: I can read it.

Mr. Walker, I don't like the record. I will exclude it.

MR. WALKER: The further admissions the Government intends to offer are the following. There is a statement by Mr. Segal before the Securities and Exchange Commission. I can show that to your Honor. It is quicker.

THE COURT: What is your objection to these, Mr. Doyle?

MR. DOYLE: I don't have any admissibility objection. The only objection might be a completeness one.

MR. WALKER: These are the ones I read to you yesterday.

THE COURT: Why don't you show them to him. Then I won't have a problem. For the life of me, I don't know what you were doing before trial. All of these problems should have been cleared up.

MR. WALKER: While Mr. Doyle is looking at

these, Mr. Ostrich is here.

THE COURT: Who is Mr. Ostrich?

MR. WALKER: The gentleman who interviewed Mr. Zuber, and I understand he is pressing his objection to the constitutional warnings. Beyond that, he is not interested in having Mr. Ostrich here.

MR. KIRSCHNER: I would like to speak to him. It may be after I have had a chance to talk to him there won't be any objection.

MR. DOYLE: Your Honor, may Mr. Segal be excused for a moment?

THE COURT: Yes.

(Defendant Segal leaves the courtroom and returns.)

MR. DOYLE: Your Honor, there is only one completeness problem here.

One of the excerpts is from page 20 and page 21. I have indicated what I think should be added at page 21. So if I can show you Mr. Walker's offer and my arrow starts on page 21 and goes over to the middle of the next page --

THE COURT: Does Mr. Walker object to that?

MR. WALKER: I may not, your Honor.

THE COURT: We have taken 45 minutes this morning on matters which should have been cleared up before

trial, Mr. Walker, every one of them.

MR. WALKER: No objection.

THE COURT: We will add what you wish to have added.

MR. DOYLE: Thank you, your Honor.

THE COURT: Make sure you do it now.

MR. WALKER: Yes, your Honor.

THE COURT: We couldn't possibly take that long to find out whether he gave him those constitutional warnings.

MR. GREENBERG: Also to establish what he said to enter into a stipulation with Mr. Walker.

MR. WALKER: There is only one other point I would like to bring to the Court's attention, and it is with regard to a wholly collateral matter, but it is an issue that I probably think will be raised in any post-trial motions if they occur, and that is whether the due diligence file was turned over, and after talking to Mr. Ostrich it is the Government's understanding that Mr. Azzerone was mistaken when he said the due diligence file was turned over, or any file resembling the due diligence file was turned over, and Mr. Ostrich says that essentially there was an opening statement at Karen that was turned over.

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THE COURT: If there is need for an evidentiary hearing on that I will hold that immediately following the trial and while the jury is out deliberating, not now.

MR. WALKER: I wanted to bring it to the Court's attention.

THE COURT: If you think there is need for an evidentiary hearing we will have while the jury is out deliberating.

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THE COURT: As I say, we will have a hearing while the jury is out, not now.

MR. DOYLE: I think it goes to Azzerone's credibility, your Honor.

MR. WALKER: It is a collateral matter, your Honor. Certainly he is bound by the answer. I didn't go into it on direct.

THE COURT: I think it is collateral.

MR. WALKER: Your Honor, there is one other matter I would like to take up because I anticipate a problem with regard to the defense case.

The government did not seek to prove through any of its witnesses that a thousand shares of Pioneer Development stock was sold out at Grimes, Hopper & Masser in Los Angeles, California, for the benefit of Acton and Clegg. Clegg was asked a question about that on cross-examination and his answer was that to the best of his knowledge it was not sold out for his benefit.

Mr. Acton was not even asked the question on cross-examination. I understand now that the defense counsel have a whole shrew of witnesses in here who intend to try to establish that the stock was sold out for the benefit of Acton and Clegg, and it is the government's position that even if this were done, it was a collateral matter that

ikb2

was gone into on cross-examination only and not part of the government's direct case, and therefore he can't be impeached on that basis.

MR. DOYLE: Your Honor, may I be heard on this point?

THE COURT: No, you don't need to be. I couldn't imagine anything more wrong, Mr. Walker. What you are saying in effect is if a witness gives an answer on cross-examination the defense is stuck with it.

MR. WALKER: If it is as to a collateral matter

b2 because we shouldn't be trying --

THE COURT: A collateral matter in a case involving the sale of stock? I don't agree that it is collateral at all. You may not have brought out this sale, but certainly the defense could bring it out. If he gave a false answer or what they consider to be false, they are not bound by it. They can impeach him on it.

MR. WALKER: I just wanted to state the government's position, your Honor.

MR. DOYLE: Your Honor, while we have a moment, may I raise a question with respect to the cross-examination of a witness Karfunkel. He is a witness who did have some SEC disciplinary proceedings. He was a broker-dealer, and there was a proceeding which resulted in his losing his

license with permission to reapply for a year and in connection with the deal or agreement that he has reached with the government, I would like to bring out that fact.

However, it does relate to at least one security which is or which may be under investigation in the near future, that may involve my client, and I would like to be able to cross-examine Mr. Karfunkel simply with respect to whether he has an understanding with the government on his own involvement in that case, without opening the door to redirect examination of Mr. Karfunkel about whether my client has any involvement in the case.

THE COURT: I think you kind of want your cake and eat it, too, Mr. Doyle. No.

MR. WALKER: It is a collateral matter. I doubt that the fact that he has such a conviction would even be relevant to his credibility. It is not a conviction.

MR. DOYLE: No, your Honor, it is a case in which he may have some agreement with the government about immunity.

MR. KIRSCHNER: Your Honor, with respect to Mr. Costroich, we would request a Jackson v. Denno hearing with respect to the Miranda warnings. It should take just a few minutes.

THE COURT: All right, put him on.

STEPHEN OESTREICH, called as a witness, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Oestreich, directing your attention, sir, to October 14, 1971, how were you employed?

A I was a trial attorney with the United States Securities and Exchange Commission.

Q Mr. Oestreich, as a trial attorney with the United States Securities and Exchange Commission were you in charge of the SEC investigation in connection with the activities in the stock of Pioneer Development Corporation?

A I was the trial attorney in charge of the investigation. My immediate superior was Dennis Block.

Q Now, sir, directing your attention to October 14, 1971, did you interview Mr. Zuber at the Federal House of Detention?

A I did.

Q And who else was present?

A An investigator by the name of Stephen Glusband.

Q And is it your understanding that Mr. Zuber was at West Street, as it is called, on a writ while he was being incarcerated forsome other offense in Michigan?

A Yes.

4kh5 Oestreich-direct

Q And did your office execute that writ?

A No.

Q Or obtain that writ?

A No, I believe it was obtained by the Joint Strike Force.

Q The United States Crime Strike Force, the Justice Department?

A That was my understanding.

Q And you had heard he was in West Street and went over to interview him, is that correct?

A That's correct.

Q Now, when you interviewed him, who was present?

A Just Stephen Glusband, myself and Mr. Zuber, a small room where you can interview people.

Q And how were you seated in the room?

A There was a small table and we had to bring in a third chair because -- I'm not even sure if there was a third chair. I know we had at least two chairs and we were sitting there and talking.

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Q Would you tell us, sir, what was said at that meeting?

A Well, initially, we came in and shook hands with Mr. Zuber, and I explained to him who I was and introduced Mr. Glusband.

jkh6 Oestreich-direct

Q What did you say?

A I said, "My name is Stephen Oestreich. I am an attorney with the SEC. This is Mr. Glusband. He is an investigator with the SEC."

I told him, in substance, to the best of my recollection, that he would not have to talk to us if he did not want to. We were conducting an investigation into a stock fraud called Pioneer Development Company.

I told him that under Title 18, Section 1001, it would be a federal crime to give false information to a federal officer. That was the purpose of that statute. In addition, he was subject to any perjury statutes if he told us any lies and we could prove it.

I told him that, to the best of my recollection now, that although there was not an attorney present representing him, I told him he could obtain an attorney. I did not ask him if he had an attorney. I asked him if he could -- if he did not have an attorney, we could probably -- we could provide one by calling up Legal Aid if he couldn't afford one.

Let's see. And that if he wanted an attorney present, we would leave now, we'd have to make another appointment with him. That's how it began.

THE COURT: I have heard enough.

Strike the statement. Those aren't adequate Miranda warnings by any means.

MR. WALKER: Your Honor--

THE COURT: No, out.

You may leave the stand.

(Witness excused.)

MR. WALKER: Your Honor, may I ask one or two more questions of this witness?

THE COURT: He has told me what he told the witness and it is not adequate.

MR. WALKER: Well, your Honor, it is the government's position that if the letter of the Miranda decision is not followed in a particular questioning, that if the witness agrees to answer fully and voluntarily, freely and voluntarily and is aware of his rights, that his statement can come in.

THE COURT: No. No, not in my court. He is a lawyer. He should have given the Miranda warnings instead of threatening him with perjury for lying to him.

MR. WALKER: Your Honor, this man is--

THE COURT: No, no.

MR. WALKER: Very well.

You are excused.

Your Honor, with regard to the ruling that your

Honor just made with regard to this statement, the government still intends to offer the testimony of Mr. Finkelstein and the reason is that it is clear that Mr. Finkelstein's statement that he received $2,500 in cash from Zuber is, in substance, what Mr. Zuber testified to -- what Mr. Zuber told Mr. Oestreich, and therefore no Bruton problem arises.

THE COURT: But you can't put in Zuber's statement because of a failure to give the adequate Miranda warnings and therefore a Bruton problem does arise. I exclude both.

MR. WALKER: Therefore, your Honor, we will offer the Segal admissions.

THE COURT: Are you ready to go now?

MR. WALKER: The government is ready.

THE COURT: Having wasted 50 minutes.

(Jury present.)

THE COURT: Good morning. I'm sorry you were kept waiting 50 minutes this morning. The court was here and we have been working on matters that don't concern the jury.

All right, proceed.

MR. SIFFERT: The government calls Robert Thomas.

R O B E R T W. T H O M A S, called as a witness by the government, having been first duly sworn, testified

as follows:

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Thomas, in 1969 how were you employed?

A I was with Thomas Investment Company.

Q And was Thomas Investment Company a registered broker-dealer?

A Yes.

Q And you traded in over-the-counter stock, is that correct?

A That's right.

Q Did there come a time that you received a telephone call concerning Pioneer stock?

A I did, in 1969, yes.

Q Do you recall the date?

A It was some time in late November. I couldn't give you an exact date.

Q Who was that call from?

A It was from a Mr. Harvey Rosen.

Q Did you know Mr. Rosen?

A Yes.

Q Was he a personal friend of yours?

A Yes.

Q And what did he say to you?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained.

Q Did Mr. Segal then get on the phone and talk to you?

A Yes.

MR. DOYLE: May we have where Mr. Segal is at the time this happened, your Honor?

THE COURT: I expect it will be developed if you will just be a little patient, Mr. Doyle.

Go on.

Q And did Mr. Rosen tell you where he was calling from?

A He told me he was calling from New York.

Q And what did Mr. Segal say to you?

A Wanted to know if we wanted to handle a transaction in Pioneer stock.

Q And what did you say?

A We said we would.

Q Did he tell you to purchase some Pioneer stock?

MR. DOYLE: Objection to the leading, your Honor.

THE COURT: Yes. Don't lead, Mr. Siffert.

Q What was said at that conversation?

A Mr. Segal asked me if we would be interested in handling a purchase of a block of stock for him which

we said we would and subsequently did purchase.

Q And did you purchase the stock in Mr. Segal's name?

A The original confirmations were written out in Mr. Segal's name.

Q And what happened after that?

A They were changed over to a Jeff Howard.

Q At whose instructions?

A Beg pardon?

Q At whose instructions were they changed to Jeff Howard?

A At Mr. Segal's instructions.

Q And did Mr. Segal explain to you why he wanted it changed to Jeff Howard?

A He said that Jeff Howard is his son and at the time I couldn't associate the names and he said Jeff Howard was his son, that was his stage name, and that he was legally Jeff Howard.

Q Do you recall whether this conversation that you just referred to was the same conversation as the first one in which he asked you to place the orders for the purchase of stock in Pioneer?

A No, I believe that was carried on in a subsequent conversation several days later.

Q And do you recall the total number of shares that he asked you to purchase in the name of Jeff Howard?

A 2,500.

Q And did you purchase those shares?

A Yes, we did.

Q I show you Government's Exhibis 25 and 26 for identification and ask if you can identify these?

A These are copies of confirmations that are a part of our confirmation system of which there were four copies and this is one of the copies of the confirmations.

MR. SIFFERT: I offer these in evidence, your Honor.

MR. DOYLE: No objection.

(Government's Exhibits 125 and 126 received in evidence.)

xx

Q Now, referring to Government Exhibits 125 and 126, do they indicate in handwriting, in the center, that duplicates of these confirmations mailed on 12/1/69, apt. 9A, c/o care of A.Segal; is that correct?

A That's correct.

Q Do you recognize the handwriting on Government's Exhibits 125 and 126?

A Yes, I do.

Q Whose handwriting is that?

A That was my secretary's handwriting.

Q And the originals were sent to Mr. Jeff Howard?

A The originals were sent to Mr. Jeff Howard at the address.

Q What was the total number of moneys spent for the purchase of the Pioneer stock, the total purchase price of both slips together?

A Slightly less than $19,000.

Q Were those confirmations, the copies, mailed to New York?

A Yes.

Q Subsequent to the purchase and the sending of those confirmation slips, did you receive a check in payment of that?

A Yes, we did.

Q And from whom did you receive the check, if you call?

A It came from Mr. Segal.

Q What happened to the check?

A We submitted it to our bank and sent it through the normal way, and the check then, several days later we were notified by the bank that the check had been returned for insufficient funds.

Q And what did you do?

A We called Mr. Segal, discussed it with him. He

said there was some error in their bank situation and if we would resubmit the check, it would clear.

Q And what did you do?

A We resubmitted it.

Q And what happened?

A We got the check back again for the second time.

Q And what did you do?

A I called Mr. Segal at that time and requested that he make arrangements with his bank to bank wire us the funds to cover the two transactions, and he said he would take care of it, and then we received a call later that day from Mr. Segal telling us that there was some mixup, that the account had been drawn down by a partner of his and that he would make arrangements to take care of us being relieved of the stock.

Q Did he identify that partner's name?

A He may have. I don't remember now.

Q What happened after that?

A Well, I can't tell you exactly the hour or the moment, but shortly after that we received a call from a broker here in New York asking if we had some Pioneer stock, saying that he wanted to buy some and--

MR. NEWMAN: Objection to hearsay, your Honor.

THE COURT: Overruled. Don't tell us what he said.

Q You received a call from a broker in New York and what did you do?

A We sold the stock back to the broker in New York.

Q Now, I show you the last page of Government Exhibits 125 and 126 and ask you if these are cancellations of the order to Jeff Howard?

A No, these are not the cancellations.

Q These are not. Sorry.

A This one here and this one here (indicating).

Q So attached to Government Exhibit 125 for identification, the second page, is the cancellation of the Jeff Howard order of 1,500 shares, and did you also cancel the 1,00-share order purchase, Government Exhibit 126?

A Yes, we did. I don't see the confirmation there, though.

MR. SIFFERT:No further questions.

MR. DOYLE: May I see the documents?

(Pause)

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Thomas, what was the price at which you sold the stock to the New York broker, do you recall?

A To the best of my recollection, I believe it was about an eighth of a point over what we had purchased the stock for originally.

Q So that you made a profit on the overall transaction?

A We came out the way we would have had if the deal had gone through with Mr. Segal, yes.

MR. DOYLE: Thank you.

No further questions.

(Witness excused.)

MR. SIFFERT: The Government calls Mr. Solomon.

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H E R M A N M. S O L O M O N , called as a witness on behalf of the Government, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. SIFFERT:

Q Mr. Solomon, in 1969 how were you employed?

A I was the president of a brokerage firm called Mann & Company, Inc., Medford, Massachusetts.

Q Did there come a time that you met Mr. Segal.

A Yes.

Q Could you explain when that was?

A I believe it was In the spring of 1969. I was in the offices of some former classmates of mine who were attorneys. I think it was at 100 East 61st Street in Manhattan.

Q What were their names?

A Marvin Rappaport and Burton Bessen.

Q Did there come a time that Mr. Segal and you had a conversation concerning Pioneer stock?

A Yes.

Q Would you explain when that was and who was present and what was said?

A Well, it was via telephone when there was an initial purchase going to be made of the security. I was told there was a block --

Q Could you tell us when that was?

A December of 1969.

Q Continue. You were answering. He telephoned and there was a conversation to purchase a block, you say, of Pioneer stock?

A Yes.

Q Do you recall the amount of that block?

A I thought initially we were going to purchase about 10,000, I think 10,000 shares. It was something supposed to be scheduled over a period of time.

Q Could you recall the complete conversation?

A It has been a specific while. We had the authorization to make the purchases. Following the conversation I had concern about whether or not there

could be completion of the transaction and I called my friend in New York, Mr. Bessen, to see if he would verify whether Mr. Segal would be able to complete his obligation, and he assured me that he could. So I had a sensing at the time that perhaps --

MR. DOYLE: Objection, your Honor.

THE COURT: Yes-.

Q I show you Government's Exhibit 70-A for identification and ask if you can identify it.

A This is Mr. Segal's client account card.

Q Was this kept and maintained in the regular course of business?

A Yes.

Q Was it the regular course of business of Mann & Company to maintain that document?

A Yes.

MR. SIFFERT: I offer it in evidence.

MR. DOYLE: No objection.

(Government's Exhibit 70-A was received in evidence.)

xx Q Referring to Government's Exhibit 70-A can you tell the jury the other transactions that you had on the account of Alan Segal at Mann & Company concerning Pioneer stock?

A The other transactions?

Q Yes, the other purchases?

A Well, we see a purchase being made of 2500 shares on December 26, one for 200 shares on December 29.

Q Could you tell us the price at which it was purchased also?

MR. DOYLE: I think it might save time if this is a straightforward account statement, it undoubtedly speaks for itself.

THE COURT: I would assume so, unless it is in Sanskrit or something.

MR. SIFFERT: It is not a very clear copy.

THE COURT: Can you read it?

MR. SIFFERT: Yes.

THE COURT: Well, read it, then.

MR. SIFFERT: On date 12-26, 2500 bought or received --

Q Is that the number of shares? Is that correct?

A Yes.

Q Pioneer Development, cost 8; debit, $20,200. Now, does debit mean $2,200 was the total purchase price?

A Correct.

Q December 19, 200 shares, $1,630 at $8; same

day 200 shares Pioneer Development, 7-3/4, $1,579.50.

On December 29, 600 Pioneer Development at 8, $4,890.

Now, this next extry says cash?

A That was a check, a check received in the amount of $20,200.

Q It shows that that check was returned. Do you know why that check was returned?

A We received a notification from the bank that there were insufficient funds.

Q I show you Government's Exhibit 70-B for identification and ask if that is the check?

A Yes, and there is a notation from the State Street Bank.

MR. SIFFERT: I offer 70-B.

MR. DOYLE: No objection.

(Government's Exhibit 70-B was received in evidence.)

xx

xx MR. SIFFERT: Continuing reading from Tovernment's Exhibit 70-A --

(Mr. Siffert continues to read from Government' Exhibit 70-A in evidence to the jury.)

Q And on the entry for January 14 again there is an item cash received $41,619, and on the bottom of Govern-

ment's Exhibit 70-A is there an indication about that $41,619?

A That check similarly was returned.

Q I show you Government's Exhibit 70-D for identification and ask if that consists of two checks, those two checks totaling the sum of $41,619?

A Yes.

Q Were these the checks that were returned for insufficient funds?

A That is correct.

MR. SIFFERT: I offer them in evidence.

MR. DOYLE: No objection.

(Government's Exhibit 70-D was received in evidence.)

xx Q Did you have any conversation with Mr. Segal concerning these returned checks?

A Yes, several different conversations and prompted by --

MR. DOYLE: Objection to what it was prompted by.

THE COURT: Sustained.

Q Just tell us what those conversations were and what was said?

A We were looking for actual --

THE COURT: Sustained.

What was said, not what you were looking for.

A I asked him where the money was, why were the transactions incompleted, why were we receiving checks marked insufficient funds.

Q What did Mr. Segal say in response?

A Oh, it was always some kind of an excuse.

MR. DOYLE: Objection to the conclusion.

THE COURT: Strike it out.

Q Did there come a time when you came to New York?

A Yes.

Q Do you recall when that was?

A I believe it was in April of 1970.

Q Where did you go?

A To meet with Mr. Segal.

Q Who was present?

A Mr. Segal was there and there was a secretary in his office by the name of Francine Zahl and another gentleman whose name I can't remember.

Q Did Mr. Segal arrive?

A Yes.

Q What was said and by whom?

A I told him I was there to receive a check for

the moneys that he owed us after having bounced a number of checks consistently and with an account obligation still outstanding, and the net result of the day was that after --

MR. DOYLE: May we simply have the conversation?

THE COURT: Sustained. Strike it out.

Q Tell us the best you can recall what Mr. Segal said and what you said to him?

A We asked him, I asked him consistently to receive a check for the moneys that he owed us.

Q What did he say?

A He said he tried his best to be able to take care of it but just hasn't been able to do it with one transaction or another not materializing and he just didn't have the money.

I said, "I want something. I'm not going to go back to Boston without receiving some kind of money for the money you owe us, and this has been going on for a number of months, and we are in position now of having the capital falling to a net capital deficit. I want something in receipt. He just didn't have any money, he didn't have any checks to give me. And he said, "Well, listen, as a show of good faith I will give you these 3000 shares of Select Enterprises."

And in the absence of receiving anything else

I thought if I came back --

MR. DOYLE: Objection to what he thought.

THE COURT: Yes. Strike it out. Don't tell us what you think; just tell us the conversation that took place, please, sir.

Q Did you take the shares of Select Enterprises back to Boston with you?

A Yes, but when I received the shares he verified for me --

MR. DOYLE: Objection to this, your Honor.

THE COURT: Sustained, unless you put it in a conversation, Mr. Siffert.

MR. SIFFERT: I will try, your Honor.

Q Did you attempt to sell the Select shares?

MR. DOYLE: Objection.

THE COURT: Sustained.

Q Did Mr. Segal at the conclusion of your transactions with him at Mann & Company owe you money?

A Yes, he did.

Q Do you recall how much that was?

A Approximately $33,000.

Q Did you commence a lawsuit against Mr. Segal?

A Yes, I did.

Q Did you win that lawsuit?

A Yes, we did.

Q Did you collect some money?

A No, we did not.

Q I show you Government's Exhibit 70-I for identification and ask if you can identify it?

A Yes, this was the statement for judgment that we received in the Supreme Court, County of New York, through our attorney, who represented the firm of Buckley, Kisselor, Mr. Sheldon Lobel.

MR. SIFFERT: I offer it in evidence.

MR. DOYLE: No objection.

(Government's Exhibit 70-I was received in evidence.)

MR. SIFFERT: No further questions, your Honor.

xx

CROSS EXAMINATION

XX

BY MR.DOYLE:

Q In fact, you did receive payment of $36,250 in respect to these transactions, did you not, sir?

A Yes.

MR. DOYLE: You did. Thank you.

Nothing further, your Honor.

REDIRECT EXAMINATION

XX

BY MR. SIFFERT:

Q When did you receive that payment?

A The total purchases amounted to in excess of $60,000. So after a period of time, one thing or another finally cleared, and it totaled up to, I guess, that amount, so he still owed us $33,000.

MR. SIFFERT: No further questions.

RECROSS EXAMINATION

XX BY MR. DOYLE:

Q I know you say something cleared up. You remember checks of Mr. Segal that cleared through the bank adding up to that amount?

A Yes, and in some cases specific payment against delivery of other securities.

Q Adding up to $36,250?

A If that is the amount that is on his client account card, yes.

REDIRECT EXAMINATION

XX BY MR. SIFFERT:

Q Mr. Doyle has Referred to payments of other checks as noted on Mr. Segal's account card at Solomon & Company.

I show you Government's Exhibit 70-E for identification, 70-F, 70-H, and ask you if you can identify them?

A There is one check for $31,500. That was

returned for insufficient funds; another check for $10,000, returned for insufficient funds. That was drawn on the account of Kelli, Jackson & Scott, Limited. And another check for $7500 returned for insufficient funds.

Q And 70-C for identification?

A A check for $8,099.50.

Q Was that returned because the account was closed.

A Yes, the account was closed.

MR. SIFFERT: I offer them in evidence.

MR. DOYLE: No objection.

(Government's Exhibits 70-E, 70-F, 70-H were received in evidence.)

MR. SIFFERT: No further questions.

MR. DOYLE: Nothing further.

(Witness excused.)

MR. WALKER: Your Honor, at this time the Government having spoken to defense counsel concerning any possible objections as far as business records are concerned and in an effort to expedite this trial, would offer certain exhibits.

We offer Government's Exhibit 40 for identification, being a company statement for Bona Fide Productions at the Republic National Bank.

MR. DOYLE: Your Honor, there won't be any objection to any of these.

MR. WALKER: I just want to describe them for the record.

THE COURT: If they have a number we can save all that. Put them in by number.

MR. WALKER: 40 for identification.

(Government's Exhibit 40 was received in evidnece.)

xx MR. WALKER: 106-A.

(Government's Exhibit 106-A was received in evidence.)

xx MR. WALKER: 106-B and 106-C.

(Governnment's Exhibits 106-B and 106-C were received in evidence.)

xx MR. WALKER: I would ask for a stipulation that 106-B is a confirmation of First Philadelphia, reflecting a confirmation which was mailed out of First Philadelphia, and an Orvis Brothers confirmation in respect of a trade of 1300 shares of Pioneer Development that was received by First Philadelphia in the mails.

MR. DOYLE: If Mr. Walker makes that representation I will accept it.

MR. WALKER: I would ask for a stipulation with

respect to Government's Exhibit 106 for identification, being a First Philadelphia Corporation confirmation, a copy of which was mailed out to Shields & Company, and a Shields & Company confirmation which was received in the mail at First Philadelphia.

MR. DOYLE: No objection.

MR. WALKER: I offer these exhibits.

THE COURT: Received.

(Government's Exhibits 106-B and 106-C were received in evidence.)

xx MR. WALKER: I would ask for a stipulation that 106-B is a comparison of First Philadelphia reflecting a confirmation which was mailed out of First Philadelphia and an Orvis Brothers comparison in respect of a trade of 1300 shares of Pioneer Development that was received by First Philadelphia in the mails.

MR. DOYLE: If Mr. Walker makes that representation I will accept it.

MR. WALKER: I would ask for a stipulation with respect to Government's Exhibit 106-C for identification. It's a First Philadelphia Corporation confirmation, a copy of which was mailed out to Shields & Company, and a Shields & Company comparison which was received in the mail at First Philadelphia.

MR. DOYLE: No objection.

MR. WALKER: I offer Government's Exhibit 107 for identification, an account form at Orvis Brothers.

MR. DOYLE: Your Honor, we have agreed that any business records may be introduced In evidence without objection. So I think we can simply save time by indicating the numbers and putting them in evidence.

THE COURT: I suggested that ten minutes ago.

MR. WALKER: It is helpful if a brief statement is made on the record.

THE COURT: No, there is no need to. That is why you give them a number.

(Government's Exhibit 107 was received in evidence.)

xx MR. WALKER: Government's Exhibits 111-A through 111-G, inclusive, are offered in evidence.

(Government's Exhibits 111-A through 111-G, inclusive, received In evidence.)

xx MR. WALKER: Government's Exhibits 112-A and 112-B, 113, 114, and 117-A and 117-B.

(Government's Exhibits 112-A. 112-B, 113, 114, 117, and 117-A were received in evidence.)

xx MR. WALKER: I offer Government's Exhibit 118 for identification, a comparison, and, your Honor, at this

time after offering this exhibit I would like to read a certain portion of this exhibit to the jury.

(Government's Exhibit 118 was received in evidence.)

xx (Mr. Walker reads from Government's Exhibit 118 in evidence to the jury.)

MR. WALKER: The Government offers Government's Exhibits 112-A and 112, Exhibit 123, 124, 127, and 129, which the Government represents to be a record, business record of Hornblower, Weeks, Hemphill, Noyes, relfecting trading in the stock of Pioneer Development Corporation, and Government's Exhibits 132-B and 132-C, confirmations of Shields & Company addressed to Robert B. Meyer --

THE COURT: Please, Mr. Walker, don't tell us what they are. Just put the numbers in. If at a later time you want to explain what they are when it means something to somebody, all right, but not now.

MR. WALKER: And Government's Exhibit 133-A.

(Government's Exhibits 122, 122-A, 123, 124, 127, 129, 132-B, 132-C and 133-A were received in evidence.)

xx MR. WALKER: Your Honor, this completes the Government's offer of documentary exhibits at this time. There will be additional exhibits to be introduced through

a witness.

THE COURT: Let's proceed.

MR. WALKER: The Government calls Stanley Schlager.

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S T A N L E Y S C H L A G E R , called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Schlager, how are you employed?

A I am self-employed; I am a Certified Public Accountant.

Q How long have you been employed as an accountant?

A 25 years.

Q Now, sir, were you employed as Certified Public Accountant in 1969?

A Yes, I was.

Q Do you know a man by the name of Alan Segal?

A I do.

Q Do you see him here in the courtroom?

A Yes.

Q When did you meet Mr. Segal?

A I met Mr. Segal with a client of mine, Mr.

Aymes, I believe, in 1968, '67, thereabouts.

Q Sir, are you familiar with a company called Bona Fide Productions?

A I am.

Q Whose corporation was that?

A That was a corporation that I know existed in Mr. Segal's office.

Q Sir, are you familiar with the corporation of Kelli, Jackson & Scott?

A Yes, I am.

Q What corporation was that? Whose corporation was that?

THE COURT: Isn't this repetitive?

Q Mr. Schlager, did there come a time, sir, in November, 1969, when you had a conversation with Mr. Segal in connection with Pioneer stock?

A Yes, I believe it was in Mr. Segal's office some time in November, and it was suggested that --

Q Will you stop and just tell us who was present at that time to your best recollection?

A I know Mr. Segal was in the office. I don't know who else was there.

Q Who was your conversation with?

A Mr. Segal.

Q This is in Mr. Segal's office?

A Yes.

Q Sir, would you tell us what was said at that time by Mr. Segal?

A Mr. Segal had asked me if I had a brokerage account and I said yes, and he asked with whom, and whether I would purchase some stock in Pioneer.

Q Was anything else further said?

A He indicated that he would pay for that stock and I should not worry about any losses that might occur on the stock, if any losses would occur.

Q Was anything said concerning the amount?

A How many shares purchased, that is?

Q Yes.

A I think there were a thousand and then I recall 1300 shares actually purchased in my account.

Q Sir, directing your attention to November, did you purchase on November 25, 1969, a thousand shares of Pioneer Development Corporation in your account at the firm of M. J. Manchester & Company?

A Yes, I purchased -- I'm not too certain of the exact date, but it was in November.

Q And, sir, later on were 300 shares purchased for the account of Stanley Schlager at M. J. Manchester &

Company?

A Yes.

Q At a price of 7-3/4?

A I don't recall the price, but it was purchased.

Q Now, sir, did there come a time when you had conversations with Mr. Segal following the purchases of the stock?

A Yes, the stock had to be paid for and Manchester looked toward me for payment because it was purchased to my account, and then I asked Mr. Segal to make payment, and after numerous visits and over a period of time payment was not made in the full amount and Manchester sold the stock out, as I recall, and payment was made some time thereafter that to close out my account.

Q Did Mr. Segal make that payment?

A Mr. Segal made all the payments with regard to that stock.

Q Was the 1300 shares of Pioneer sold out by M. J. Manchester on January 26, 1970, at a price of $3-1/4?

A I believe that is correct.

MR. WALKER: I have no further questions.

CROSS EXAMINATION

BY MR. DOYLE:

Q Mr. Schlager, you knew Mr. Segal quite well in

1969, didn't you?

A Yes, I did.

Q You had a professional relationship with him, having served and then serving as an accountant and doing personal accounting work for him?

A I did a couple of personal tax returns for him and his wife and was helpful in going through some of his accounts at some time.

jkh 1 Schleger-cross

T5

Q And the Aymes that you met or who was in your presence when you met Mr. Segal, that is the Mr. Aymes who is the president of Alphabex Corporation, isn't it?

A That's correct.

Q You were the accountant for Alphabex Corporation also, were you not?

A Yes.

Q There was an occasion in 1969 when you and Mr. Aymes went to the Riverside Hotel in Reno at the request of Mr. Segal to conduct certain business transactions, isn't that correct?

A That is correct.

MR. WALKER: Objection, your Honor. I think that is irrelevant, getting into the Riverside Hotel.

THE COURT: Sustained. Strike it out.

Q Now, in connection with the transaction that you have described there is no question in your mind, sir, that Mr. Segal told you that he would pay for these shares, is there?

A No, there is none.

Q There is none. And subsequently the shares were sold out and the balance due and owing was paid by Mr. Segal, isn't that correct?

A That's correct.

jkh2 Schleger-redirect

MR. DOYLE: No further questions, your Honor.

MR. WALKER: Brief redirect, your Honor.

REDIRECT EXAMINATION

BY MR. WALKER:

Q Did Mr. Segal tell you, sir, that you could keep the money if the stock went up but that if the stock went down he would guarantee you against any losses?

A Well, he more or less indicated that if there was a profit factor involved, I would be able to keep the profit.

Q And on that basis you purchased the stock, is that correct?

A Well, I believe I purchased the stock on his recommendation and knowing that he was going to pay for it.

Q If the stock dropped down?

A No --

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained.

MR. WALKER: Very well. Very well.

I have no further questions.

MR. DOYLE: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. WALKER: Mr. Karfunkel.

M I C H A E L K A R F U N K E L, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Karfunkel, directing your attention, sir, to 1969, the fall of 1969, how were you employed at that time?

A I was employed by Economic Planning Corporation, a brokerage house.

Q What was Economic Planning Corporation?

A A stock brokerage house who was also making markets in various stocks.

Q What was your position there?

A I was a broker and also I was in charge of the firm's trading accounts.

Q How long had you been at Economic Planning as of the fall of 1969?

A About two years, sir.

MR. DOYLE: Excuse me, how many years?

THE WITNESS: Two years.

Q I'm sorry, I didn't hear.

A Two years.

Q Did there come a time, sir, when you commenced

trading in Pioneer Development stock?

A Yes.

Q And do you recall, sir, approximately when that occurred?

A That was the beginning of November of 1969.

Q Do you have a document, sir, that will refresh your recollection concerning specific dates and specific trades?

A Yes, I have a list of all the trades.

Q I show you Government Exhibit 60 for identification and ask if you can identify that document?

A Yes. This is a list of all the trades which were made in Pioneer Development stock.

Q Is that your handwriting?

A Yes, sir.

Q Was that kept simultaneously with the trades?

A Yes,it was.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

xx (Government's Exhibit 60 received in evidence.)

Q Can you tell us when Economic Planning started trading Pioneer Development stock?

A Yes, on November the 3rd, 1969.

Q Now, sir, were you actively trading the stock

following November 3, 1969?

A Yes, I was.

Q Would you tell the jury what is done when a firm such as yours trades stock in the normal fashion; how do you trade the stock?

A Well, we maintain a market which really means that we buy and sell at the prevailing rates from other brokerage houses mostly, and buy the stocks at the prevailing market price and also sell the stock to them when they so wish, at the prevailing market.

Q Sir, would you tell us how you came to trade this particular stock?

A I had a friend at another brokerage house. His name was Hy Guralick. He was a trader at another brokerage house by the name of Peter P. McDermott and he told me about it.

Q Now, at the time that you started trading the stock, was there any public information available on the stock?

A No.

Q Were there any registration statements or prospectuses available --

MR. DOYLE: Objected to as repetitious, your Honor.

THE COURT: I think so. Sustained.

MR. WALKER: Very well.

Q Do you recall, sir, what other brokerage houses were trading the stock?

A Yes, the brokerage house of Karen & Company, First Philadelphia, Peter P. McDermott, I think Orvis Brothers is in the sheets, also.

Q Now, when you say in the sheets, would you tell us what you mean by that?

A Well, there's pink sheets --

THE COURT: Sustained. It is repetitious. We have had the pink sheets meaning at least three times.

MR.WALKER: Very well.

Q Sir, directing your attention to November 7, 1969, were there any purchases of stock on that day?

A Yes, there were some large purchases of stock from Hornblower & Company from Chicago.

Q Do you know if Chicago was trading for their own office?

A I believe they were trading for the Denver office, Denver, Colorado, office.

Q And did you receive communications from the Chicago office?

A Yes, they called me up and said that they had stock for sale.

Q How much stock was purchased by Economic Planning on November 7, 1969?

A Total of 3,500 shares.

Q Was that a thousand at 7-1/2 and 2,500 at 7-1/4?

A Yes, sir.

Q Were 2,700 of those shares sold out on that day?

A Yes.

Q Were those sold to other brokers?

A Yes, they were.

Q Can you tell us which brokers?

A Blair & Company, Hornblower & Company, Charles Plohn & Company, Fillor Bullard & Company and Lawrence Frazier & Company.

Q Now, sir, directing your attention to November 10th or thereabouts, was 2,000 shares of stock, Pioneer stock, purchased from Hornblower Weeks Hemphill & Noyes?

A Yes, it was.

Q Was that price 8-1/2?

A 8-1/4, sir.

Q 8-1/4. Was that stock sold on the same day or 2,100 shares of Pioneer sold that same day, of which the 2,000 was part?

A I believe they were.

Q During this period of time did you have any

conversations with an individual at Karen & Company?

A Yes, I had.

Q And what was his name?

A His name was Joe. I knew him as Joe, the first name Joe.

Q Can you tell us approximately when the conversation occurred?

A Approximately the 6th of November, 1969.

Q What did Joe tell you?

MR. NEWMAN: Objection. Hearsay.

THE COURT: Sustained.

MR. WALKER: Your Honor, both are named as unindicted co-conspirators in this case.

THE COURT: I'm sorry, I missed the name.

MR. WALKER: Joe at Karen & Company, who testified in this case.

THE COURT: Overruled.

Q What was said?

A Said that he had stock available and if I will need stock, he can offer it at a quarter of a point below the offering price.

Q Directing your attention, sir, to January or thereabouts, early January of 1970, did you make efforts to find out about Pioneer Development Corporation?

A Yes, I had.

Q And what did you do? What steps did you take?

A Well, I tried to find out some documents or some material which would reflect as the operation of Pioneer Development and I asked around from the other brokers who were quoting the stock and also buying stock from Economic Planning, whether they knew anything about Pioneer Development, and there was a man by the name of Mr. Davis who was frequently quoting this stock and asked him whether he knew anything about --

MR. DOYLE: May we have what firm he was with?

THE WITNESS: Davis Securities.

A (Continuing) If he knew anything about the stock of Pioneer Development or if he knew anybody who would know any information about Pioneer Development, and Mr. Davis told me that he knew of such people, and that he would call them and they would call me.

Q The following day, sir, and this was, I believe, in early January?

A Yes.

Q Did you receive a telephone call?

A Yes, I received a telephone call from a Mr. Michael Gardner, who had introduced himself, who was with Gardner Securities, and he said that Mr. Davis asked him

to call me and he had the information that I was interested in, and invited me up to his office, and he would give me the information.

Q Were you invited to the office?

A Yes, I was.

Q Was this in a subsequent telephone call or was it the same telephone call?

A This was the same telephone call.

Q And where did you go?

A I went up to his office on 61st Street and Lexington Avenue in an apartment building.

Q When you got there, sir, who was there?

A Mr. Michael Gardner was there,,Mr. Alan Segal was there, a secretary by the name of Zahl and an attorney who was in and out by the name of Marvin Rappaport.

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MR. DOYLE: By the name of what, sir?

THE WITNESS: Marvin Rappaport.

Q How long were you in the office?

A About an hour, an hour and a half.

Q And did you have a conversation with certain individuals while you were there?

A Yes.

Q And who were the individuals?

A Mr. Gardner, Mr. Segal.

Q Now, sir, would you tell us as best you can recall what was said by yourself, Mr. Gardner and Mr. Segal, as it was said at that time?

A Well, I asked again that I was there to find out information about Pioneer Development, and I wanted that information, and they assured me that they had the information, and Mr. Segal gave me some documents which reflected that Pioneer Development was the owner of large Mercury mines and with vast resources and some--

MR. DOYLE: Your Honor, I think this is conclusory testimony. Can we have a conversation?

THE COURT: Sustained.

Q Can we have a conversation? After he gave you certain documents, what was said?

A Yes. He said that Pioneer Development had mercury, substantial mercury properties and that the mine was dormant at that time, and it would soon be reopened, at which time the company, Pioneer Development, will be generating profits, and based upon those profits, the price of the stock can be worth, reflecting a ten multiple, anywhere from 40 to $50 a share.

Q Was anything said concerning the market activity?

A Yes, Mr. Segal wanted to find out whether there was much activity in Pioneer Development.

MR. DOYLE: May we simply have the conversation?

THE COURT: Yes, sustained.Strike it out. It is not responsive.

We will take a short recess.

MR. WALKER: Very well.

(Recess.)

BY MR. WALKER:

Q Now, sir, you were telling us about a conversation that you had with Mr. Gardner and Mr. Segal in Mr. Segal's office in early January of 1970.

What was said concerning the stock, the Pioneer stock at that time?

A Mr. Segal was interested to find out who was buying and who was selling the shares up to that time, and he told me that he knew of certain activities and most of the activities that have occurred in that time. He asked me about whether I bought any of the stock from Hornblower in Chicago, and I said yes.

He told me that if not for that stock coming out, which somebody back-doored to him, then that price of Pioneer Development would have been much, much higher than it was at that time.

Q Sir, you said that he said that somebody back-doored him. What does the term "back-door" mean?

A It means that if you have an arrangement with somebody that you are going to buy the stock and the other person, all the sellers are going to hold off from selling the stock, then the purpose who is buying the stock will increase the demand and while the supply will be constant and will have an effect on the stock, the price of the stock would have to go up.

Q And what happens when a back door occurs, back-dooring occurs?

A It means that the supply of the stock is increased and therefore the price of the stock either does not change, despite somebody buying the stock, or it could even go down, depending on how is being sold into the market.

Q Did he indicate at that time who he felt was back-dooring him?

A Yes, he had mentioned a name, but I couldn't recall that name.

MR. DOYLE: Excuse me, what was the name, sir?

THE WITNESS: I could not recall the name.

Q What further was said at that meeting concerning what you should do, if anything?

A Yes.

He said that I should keep in contact with him and he was very -- he made many purchases and sales in the

stock market--

MR. DOYLE: Your Honor, is this a conversation?

MR. WALKER: This is a conversation.

THE COURT: Yes.

A And he said he was going to give me some retail --

MR. NEWMAN: Objection. I believe the witness is either reading from some papers in front of him or referring to them. Are they in evidence?

THE COURT: Yes, those are in evidence.

MR. NEWMAN: I beg your pardon?

MR. WALKER: He is not reading from them.

THE COURT: He is not reading, anyway.

MR. NEWMAN: I withdraw my objection. I'm sorry.

THE COURT: What did he say now?

Q What did he say?

A He said that I should keep in contact with him' and that he was going to give me some retail commission business in the future.

THE COURT: What kind of business?

THE WITNESS: Commission business.

Q Sir, following that meeting, what happened? Did you receive a telephone call from Mr. Segal?

A Yes, following that meeting, Mr. Segal and Mr. Gardner both called me regularly and asked whether I sold

any stock and to who I sold this stock, which brokerage houses were buying the stock.

Q Directing your attention to January 16, 1970, what happened on that day?

A Yes, a firm by the name of Kelli, Jackson bought a thousand shares of Pioneer Development stock at 4-1/4. The order was given to me by Mr. Segal.

Q Was there any conversation at that time with Mr. Segal that you can recall?

A Yes, the way I -- Mr. Segal said that he feels that the price of the stock is going to go higher and that he was interested in buying another thousand shares at that level.

Q What was the price?

A 4-1/4.

Q Now, sir, what happened on the settlement date of that trade?

A We were paid by a check and the check bounced.

Q Directing your attention to January 19, 1970, did you get a call from Mr. Gardner on that day?

A Yes, Mr. Gardner said to me that a mutual fund by the name of Forsythe Fund was interested in buying a thousand shares of Pioneer stock at 3-3/4 and that he had a friend over at M.J. Manchester, a brokerage house, who

was interested in selling 1,300 shares at 3-1/4, and he asked me to handle both sides of that transaction.

Q Now, sir, what kind of a trade was that?

A This is called general a directed trade.

Q Would you tell us, sir, what is a directed trade?

A A directed trade is a trade whereby the buyer and the seller have an agreement that they will buy the stocks at a certain price and that they will use the services of a broker to consummate the trade. The price is predetermined despite of the market, of the free market which is determined by supply and demand. It is a market which is arranged and not determined by supply and demand.

THE COURT: We will take a very short recess.

Miss, will you come in and see me in the robing room.

ALTERNATE JUROR NO. 5: Yes.

(In the robing room.)

THE COURT: Alternate juror number 5 is sick, as you can see. Do you have any objection to excusing her?

MR. DOYLE: No.

MR. WALKER: None whatsoever.

THE COURT: All right, she is excused.

(Open court.)

MR. WALKER: May I proceed, your Honor?

jkh17 Karfunkel-direct

Q Mr. Karfunkel, before we had the brief recess, you were telling us what a directed trade is and would you now tell us, since you were in the middle of your explanation, what a directed trade is?

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A Yes. The price of a stock is usually determined by supply and demand, and the free market determines how much, what the price is, depending how much supply there is, and what the demand for a certain stock is. If somebody makes an agreement with somebody saying that I will --

MR. DOYLE: I can't hear you, sir. Will you speak a little louder, please?

THE COURT: If somebody makes an agreement with somebody saying --

A Saying that he will sell the stock at a certain level, then the seller is, number 1, assured that he will get the stock at this level and also, the buyer will also be assured that the stock will be sold at that level. And at the same time, it is not going -- the seller of the stock is not going into the market and depressing the stock, and the buyer of the stock is not coming from the market, increasing the price of the stock.

Q So is it safe to say that a directed trade avoids the risks of the market?

A Yes.

Q When you received a directed trade on January 19th from Mike Gardner, were you, in effect, assured of a profit without a risk to yourself?

A Yes, I was.

Q Directing your attention to January 21st, did you have a conversation with Mr. Segal on that day?

A Yes. The price of the stock has gone up to $5 a share, and Mr. Segal has asked me that he would like to sell, his firm, Kelli, Jackson wants to sell 2,500 shares of Pioneer Development at 5, and that he found a buyer for it, a brokerage house by the name of Lindquist from Salt Lake City, who was interested to purchase 3,000 shares of Pioneer Development at 5-3/8.

Q What kind of a trade was that?

A Also directed trade.

Q Now, directing your attention, sir, to January 23rd, what was the stock trading at at that day?

A It was around 5, 5-1/2 dollars was the buy price, and about six and a half dollars, six and a half was the ask price.

Q Directing your attention to January 27th, did you have a conversation with Mr. Segal on that day?

A Yes. Mr. Segal had a buyer, a fund by the name of Technical Fund, who was interested in purchasing a thousand

shares of Pioneer at 5-1/4, and at the same time a brokerage house by the name of Birr Wilson -- I believe it was a California outfit -- was interested in selling 1,1910 shares at 4-1/2.

Q Was that trade executed?

A Yes, both sides were executed.

Q What kind of a trade was that?

A Also directed trade.

Q Now, directing your attention to January 29, 1970, did you have a telephone conversation with Mr. Segal on that day?

A Yes, Mr. Segal called me and said that he had a friend by the name of Harvey Rosen, who was a man from Wichita, Kansas, who was interested in purchasing 3,000 shares of Pioneer at 5-1/4.

We bought the stock for him. We sold him the stock, 3,000 shares at 5-1/4, and Mr. Segal gave us a check, Harvey Rosen's check for $15,750, which check bounced. It was later paid in three instalments. For the final instalments I had to fly out to Wichita, Kansas, to get the money, but it was paid.

Q Who did you receive the money from?

A I received the money, I believe,two payments were made by Mr. Segal and one payment was made from Mr.

Q Now, given that market as it existed on January 29th, what would the impact be of a purchase of 3,000 shares of Pioneer?

A It would sharply raise the price of the stock.

Q Directing your attention to February 2nd, did you have a telephone conversation with Mr. Segal on that day?

A Yes, I had. Mr. Segal said that Birr Wilson, somebody was being sold out on the coast by a brokerage firm of Birr Wilson, and they had 3,500 shares of Pioneer stock for sale at 2-1/2, and that he was going to find a buyer for it, which he did. Another brokerage house by the name of Fiddler Securities bought the stock at 2-7/8.

Q What kind of trade was that?

A Also directed trade.

Q Did you have a conversation with Mr. Segal in respect of that particular trade?

A Yes. He has complained that the market --

MR. DOYLE: Objection, your Honor, to the conclusions.

Q What was your conversation, sir, and what did he say?

MR. DOYLE: Was it a telephone conversation?

THE WITNESS: Yes.

THE COURT: What did he say?

Q What did he say?

A Mr. Segal complained that the markup was--

MR. DOYLE: Please, just the conversation.

THE COURT: That is what he is saying.

What did he say?

THE WITNESS: He said that the markup was too great, namely, we made too much money on the trade.

MR. DOYLE: Who is we?

THE WITNESS: The brokerage house, Economic Planning.

Q Directing your attention, sir, to February 5, 1970, did you receive a telephone call from Michael Gardner?

A Yes, I had, and it was in connection with V.F. Naddio.

Q What did Mr. Gardner say?

A Mr. Gardner said the brokerage housewas going out of business and he wanted me to purchase 1,800 shares of Pioneer Development which was their entire inventory of stock at 2-3/4.

Q And did you purchase that?

A Yes, we did.

Q Directing your attention to February 9th and February 10th, did you have a conversation with Mr. Segal on that day?

A Yes. Birr Wilson, a brokerage house--

Q What did Mr. Segal say, sir?

A Mr. Segal said that somebody's being sold out at a brokerage house out on the coast by the name of Birr Wilson and they had 5,000 shares of stock for sale at $2 a share, and he wanted us to buy it and that he was going to find a buyer for this stock. Next day he called me and says that his firm, Kelli Jackson, wants to buy the stock, 5,000 shares at 2-1/2 dollars.

Q And, sir, what kind of a trade was that?

A Also directed trade.

Q Now, in the latter part of February, what was the price of Pioneer?

A It has dropped very,very sharpy and it has reached as low as half a dollar. Latter part of February it reached a low of 7/8 of a dollar.

Q On March 2nd or thereabouts, what happened on that day?

A On March 2nd in the evening it decreased sharply, and the price of the stock was half a dollar a share.

Q Whatcaused this price drop during this period of time?

MR. DOYLE: Objection.

THE COURT: If the witness knows.

A Very substantial selling.

Q Directing your attention, sir, to February 25 or thereabouts, did you have a conversation with an individual who identified himself as Mr. Howard?

A Yes, I did.

MR. NEWMAN: Objection, your Honor. No foundation has been laid.

MR. WALKER: Your Honor, I can connect it up.

THE COURT: Overruled.

Q Mr. Karfunkel, will you tell us what the conversation was?

First of all, was this conversation in person or over the telephone?

A Over the telephone.

Q What did this individual say?

MR. NEWMAN: Objection, your Honor. No found-

tion laid.

THE COURT: Sustained.

Q Did you later meet this individual?

A Yes, I did.

MR. NEWMAN: Objection.

THE COURT: Sustained. Strike it out.

Q Did you later meet an individual who identified himself as Robert Howard?

A Yes, I did.

Q Did you recognize his voice as being the same voice you heard over the telephone?

A Yes, sir.

Q Referring back to the telephone call, what did this individual who identified himself as Mr. Howard say to you?

A Mr. Howard said that he had a block of 10,000 shares of Pioneer Development stock for sale. He assured me that the stock was free trading stock without awny restriction on it, and he said that he bo8uht the shares personally at a much higher level. He suggested that it would be a good investment and I would be able to make money in the future by buying the shares.

Q Did he say anything about why he was selling?

A He said that he needed the money and that is why

he was selling.

Q Was a meeting arranged?

A Yes.

Q Where?

A I met him at the Americana Hotel.

Q Ho was present?

A Only myself and Mr. Howard.

Q Can you recall the date?

A I think it was the 24th.

Q I show you Government's Exhibit 61-A for identification and ask you if you can identify that, if that refreshes your recollection on the date?

A Yes, it was the 25th of February, and that is the date that I met Mr. Howard in the Americana Hotel.

Q Do you see Mr. Howard in the courtroom?

A I believe I do.

Q Which one?

A I think this is the ggentleman, the first one right here.

MR. WALKER: May the record reflect the identification?

THE COURT: Yes.

Q What was the conversation that you had with Mr. Howard at the Americana as best you can recall?

A The best I can recall is -- I'm somewhat vague on this --

Q Just your best recollection, sir?

A He had some stock certificates with him and he assured me --

MR. NEWMAN: If your Honor please --

THE COURT: Sustained.

MR. NEWMAN: I ask that it be stricken.

THE COURT: Strike it out.

Q What do you recall him saying, sir?

A He said that he had 10,000 shares of stock which he wanted to sell and he assured me -- I was not quite certain that the shares --

MR. NEWMAN: Objection, sir.

THE COURT: What you said and what he said? What did he say? What did you say? Give us both sides of the conversation.

A He said that he had the 10,000 shares for sale, upon which I said that I would buy the shares from him provided the shares had no restrictions on them.

THE COURT: What did he say?

THE WITNESS: He said that if I would give him a down payment, $4500, he was going to give me the shares and allow me to transfer the shares and give him the balance

upon the shares coming back from transfer.

Q What did you say?

A Fine.

Q I show you Government's Exhibit 61-A and 61-B and I ask you if you can identify those documents?

A Yes, this is a piece of paper which was signed by Mr. Howard acknowledging receipt of $4500 partial payment for 10,000 shares of stock.

Q I show you Government's Exhibit 61-B for identification and ask you if you can identify that, the second check down in the microfilm?

A Yes, the second check is made out to George Karfunkel, for $4500, which was one and the same $4500 which was given to Mr. Howard as a down payment.

Q Who is George Karfunkel?

A My brother?

Q On subsequent occasions did you give checks to Mr. Howard?

A Yes, I did.

Q Will you tell us, sir, where these checks were given?

A Excuse me?

Q Where did you give him these checks?

A Yes, I believe I met him on another occasion,

I think it was on Broadway, corner of Wall Street.

Q Was that following a telephone conversation arranging the meeting?

A Yes.

Q Who made the telephone call?

A Mr. Howard did.

Q I show you Government's Exhibit 61-C and 61-D for identification and ask you if you can identify those documents?

A Yes, it is a check.

Q 61-C you are referring to?

A 61-C is a check payable to Leah Karfunkel, my wife, and I believe this was a check for $5,767.88, which, I believe, was used in payment for the same stock.

Q I show you 61-D for identification and ask you if you can identify that?

A That is a check which was made out to George Karfunkel in the amount of $3,931.25, and I believe that was another check which was endorsed by Mr. Robert Howard, and this was used also as a payment for the same stock.

MR. WALKER: I offer these four documents in evidnece.

MR. NEWMAN: Can I see them?

I have no objection.

(Government's Exhibits 61-A, 61-B, 61-C and 61-D were received in evidence.)

xx MR. WALKER: Your Honor, may I read these to the jury?

(Mr. Walker reads from Government's Exhibits 61-A, 61-B, 61-C and 61D in evidence to the jury.)

MR. WALKER: No further questions of this witness.

Your Honor, I'm sorry, I do have two brief questions of this witness.

BY MR. WALKER:

Q I show you Government's Exhibit 60-A for identification and ask you if you can identify that?

A Yes, this is a sheat from the retail customers, from a record of retail customers who sold stock by Economic Planning Corporation.

MR. WALKER: I offer it.

MR. DOYLE: No objection.

MR. NEWMAN: May I see it, please.

No objection.

(Government's Exhibit 60-A was received in evidence.)

xx Q I show you also 60-B for identification and ask you if you can identify that document?

A Yes, it is also a record of some trades from out of the retail customer sheet.

MR. WALKER: I offer this document as well.

MR. DOYLE: No objection.

(Government's Exhibit 60-B was received in evidence.)

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Q Sir, with respect to 60-A, does that reflect a sale of 200 shares of Pioneer on January 28 or thereabouts?

A Yes, January 28 at a price of $4.25 for Jack Levine.

Q Does 60-B reflect a purchase of 1500 shares of Pioneer Development at $4.25 on January 6?

A January 16.

Q January 16. And the sale of 2000 shares of Pioneer Development on January 21, the purchase being at $4.25 and the sale being at $5 a share in the name of Kelli, Jackson & Scott, care of Stuart Schiffman?

A Yes, sir.

MR. WALKER: No further questions.

CROSS EXAMINATION

XX

BY MR. DOYLE:

Q My name is John Doyle and I represent the defendant Alan Segal.

My first question to you concerns whether you recall a conference with Mr. Dennis Block of the Securtiies and Exchange Commission on April 19, 1971, at which Messrs. Block, Ormstein and Ostrich were present? Do you recall that, sir?

A Yes, I do.

Q Have you reviewed a memorandum of that conference in preparation of your testimony here today?

A Yes.

Q Mr. Walker showed it to you?

A Yes.

Q On the occasion of that conference had you made a decision in your own mind to tell the truth about Pioneer Development Corporation to the SEC?

A Yes, I believe I had.

Q You had an attorney with you, didn't you?

A No, I didn t.

Q Didn't you have a Mr. Henry Mahlon with you on that occasion?

A No.

Q Are you positive about that?

A Not on the investigation. There was no Mr. Mahlon present at the investigation.

Q Did you have an attorney by the name of Henry

Mahlon?

A Yes.

Q Did you have him retained to represent you on or about April 19, 1971?

A Yes.

Q Was he not present with you at this conference?

A Are you referring to a memorandum?

Q Yes.

A He was present.

Q You were asked certain questions by the SEC and you gave certain answers about Pioneer Development Corporation?

A Yes.

Q On that occasion you made no mention whatsoever of back-dooring? Isn't that correct?

A True, sir.

Q You made no mention whatsoever of directed trades on that occasion?

A True.

Q You were named as a co-conspirator in this case. Has the Government promised you immunity in return for your cooperation?

A Mr. Walker said that if I said the truth I will not be prosecuted. However, he also said if I lied

I woudl be subject to perjury and also I would be prosecuted.

Q You understand if Mr. Walker should take the position that your testimony is not truthful then he intends to prosecute you, doesn't he?

A That is true.

Q Now, with respect to your testimony about trading in the over-the-counter market, and the subject of back-dooring, you testified on direct examination that at a meeting in early January, 1970, Alan Segal said something about back dooring? Was that your testimony on direct examination?

A Yes, sir.

Q Do you recall testifying before the grand jury on August 13, 1974?

A yes, I do.

Q Do you recall being asked the following question and giving the following answer at page 18:

"Did you have a discussion with Mr. Segal as to why the stock was not going up?

"A I had discussed at a much later date. He said that they were back-dooring him and selling the price of the stock in opposition to what they had agreed to."

Was that your testimony at that time?

A Yes, sir.

Q Now, which testimony was true? The testimony you gave at that time or the testimony you have given in court here today?

A Both of them are true, sir. The testimony refers in the grand jury to the fact that Mr. Segal kept assuring me all the time that the price of the stock was going to go higher and he wanted me to maintain a position in the stock, a long position in the stock, and all the way at the end when the stock practically collapsed he confessed to me that it did not work out because people were selling, selling the stock in violation of the agreement with him.

Q Did he say anything on that subject when you met him at this first meeting, him and Gardner?

A Yes, at that meeting we had only discussed one particular trade, and that trade was the Hornblower trade out of Chicago, and he had referred to that trade at that meeting as a back-dooring trade.

Q You were trading this stock over-the-counter since early November?

A Yes.

Q And you were making a profit on your trading?

A Overall it was a profit.

Q Overall it was a profit?

A Yes.

Q And you were trading the stock in the normal fashion? Isn't that correct?

A Yes, true.

Q And the fact is there were a number of over-the-counter firms and also member firms making a market in the stock during that period of time, in addition to the ones you mentioned on direct examination, weren't there?

A Yes.

Q Do you remember who they were independently of documents to refresh your recollection?

A I think that Mayer & Schweitzer was making a market, I think Kelley, Andrews was another brokerage house who was making a market; I think Commonwealth Chemical perhaps may have been making a market.

Q I believe your description of a direct trade is a price that is negotiated between the buyer and the seller?

A Yes.

Q Now, in transactions that are conducted through the vehicle of the pink sheets or bid and asked prices, in fact those prices are also negotiated, are they not?

A Yes, they are.

Q The over-the-counter market is a negotiated market among broker-dealers and broker dealers?

A That is correct.

q Now, in the so-called directed trades do you ever communicate with any of the principals on either side of the transaction in order to determine whether what you had been told by Mr. Segal was correct, whether so-and-so had been advised by Mr. Segal or had told Mr. Segal he wanted to sell or wanted to buy? Did you have any independent conversations with the principals in these transactions about this?

A Yes.

Q Who?

A The order clerks who at the respective houses have called me and have confirmed the trades, that they were selling or buying stocks from Economic Planning. But prior to that we also received a call from Mr. Segal that so-and-so will call and ask to buy or sell stock.

Q Did any person of any of these firms ever tell you that Mr. Segal had been in touch with him either directly or indirectly?

A No.

Q Was anyone else present during these conversations that you testified about concerning directed trades?

MR. WALKER: Your Honor, I believe the testimony is there were telephone calls.

THE COURT: That is my recollection.

MR. DOYLE: I think that is right, your Honor.

Q Isn't it a fact, Mr. Karfunkel, that you have subsequent to your meeting with the SEC in April, on April 19, 1971, and in return for being granted immunity from prosecution in this case, in fact, fabricated these conversations about directed trades?

A No.

Q Isn't it a fact that the conversations about back-dooring were not mentioned to the SEC in April, 1971, and you have since thought of that in order to bolster your cooperation with the Government, and they are fabrications?

A No, sir.

Q But you did lie to the SEC in April, 1971?

A No, I did not.

Q So your testimony which was purportedly complete and truthful and with mentioned noth ing about back-dooring and directed trades, that testimony was truthful? Is that your testimony today?

A No, sir, the question of back-dooring was not asked at the Commission, and that is the reason it was not brought up.

Q Didn't you go in there to tell them the whole story about Pioneer?

A No.

Q Weren't you offering your cooperation to the SEC in order not to have disciplinary proceedings brought against you?

MR. WALKER: Objection as to form.

THE COURT: Overruled.

THE WITNESS: Do I answer the question?

THE COURT: Yes.

A The question of proceedings against me in Pioneer Development was never brought up by the Commission. There were only two stocks, namely,

Q You were trying to make peace with the SEC about your probiems in those stocks?

A Yes, but it had nothing to do with Pioneer.

Q But the memorandum says Pioneer Development Corporation on it?

A Yes, sir.

Q Did you discuss Pioneer Development Corporation?

A We discussed the possibility of what penalty we would be willing to receive in order to dismiss the civil action.

Q You were asked questions about Pioneer Development on that occasion, weren't you?

A Yes, sir.

Q And you went in there to tell the whole truth about Pioneer Development Corporation and about any other topic the SEC would ask you about?

THE COURT: I think he has answered the question.

MR. DOYLE: May I have one moment, your Honor? Nothing further.

MR. WALKER: May we see your Honor at the side bar before the witness is excused?

(At the side bar.)

MR. WALKER: Your Honor, during the spring of 1970 this witness was asked to appear before the SEC in a continuing investigation into Pioneer and Select, both of which stocks were interrelated because Mr. Segal had been involved, and at that time prior to going to the SEC this witness had a conversation with Mr. Segal about what his testimony should be at the SEC, and the Government wishes to offer that at this time.

MR. DOYLE: I have not impeached Him about the testimony there.

THE COURT: I don't see how this conversation with Mr. Segal has anything to do with what he said before

the SEC.

MR. WALKER: Your Honor, the conversation was prior to the appearance of this witness before the SEC.

MR. DOYLE: I have not interrogated him with reference to that.

THE COURT: You didn't?

MR. DOYLE: No.

THE COURT: You asked him about back-dooring.

MR. DOYLE: About the conference in 1971 with the SEC. I deliberately did not ask him about his prior lies because I knew that would open the door.

THE COURT: I would have to check it, Mr. Walker. I wish I had enough confidence in you, which I don't at this point, to rely on you. I will have to read the record.

(In open court.)

MR. WALKER: Is there any other cross, your Honor?

THE COURT: I will do that during the lunch hour.

CROSS EXAMINATION

BY MR. NEWMAN:

Q Mr. Karfunkel, that stock that you got from Mr. Howard, whose name was on that stock? Do you recall?

A I don't recall, sir.

Q Does the name J. Walker have any meaning to you? Does that refresh your recollection in any way?

A None whatsoever.

Q You say that you started to talk to Mr. Segal about Pioneer Development and that started in November? Is that correct? Of 1969?

A No, I think we said the first week of January, 1970.

Q And at that time did Mr. Segal mention the names Burney Acton and Michael Clegg to you?

A I don't recall. I subsequently heard the names. I never met these people, but I do not recall of any singloe conversation with Mr. Segal mentioning these names, Burney Acton.

Q Did Mr. Gardner mention it to you? Who they were?

A Subsequently -- I could not recall exactly when I heard these names.

Q Some time around that time when you spoke to Mr. Segal?

A It could have been, yes, sir.

Q And it was told to you just who they were, the president and the vice-president of the company? Is that

correct?

A It could have been, yes, sir.

MR. WALKER: Objection.

I move to strike. I think it is inconclusive. This witness does not have --

MR. NEWMAN: He said it could have been.

THE COURT: Strike it out.

Q Mr. Karfunkel, when Mr. Howard delivered the stock to you, you were at that time aware, you knew who Michael Clegg was and Burney Acton? The names then had meaning to you? Isn't that correct?

A I could not say. I could not say definitely when I first heard of these names. I never traded, I have never --

MR. NEMAN: I move to strike. You have answered my question.

Q Do you recall if you ever saw the name Robert, Howard, Bob Howard, Robert Finkelstein onany of these certificates?

A I think it was not in Mr. Howard's name.

Q That is your best recollection?

A That is my best recollection.

MR. NEWMAN: Thank you very much.

THE COURT: Any other cross? Any redirect,

other than the topic we discussed at the side bar?

MR. WALKER: I might wish to show the witness some certificates.

REDIRECT EXAMINATION

BY MR. WALKER:

Q I show you Government's Exhibit 1-U and 1-B in evidence, 1-U being a transfer record containing a letter of transmittal plus a stock certificate, and I ask you if you can identify the stock certificate?

A I think this was -- again I do not remember seeing this certificate before, but it should have been the certificate as part of the 10,000 shares, one certificate for 4100 shares in the name of Mr. McKibbon.

Q I show you Government's Exhibit 1-V in evidence and ask you if you can identify this?

A I think these were the certificates in the name of Jay Walker which are part of the 10,000 shares.

Q Adding these two up we come to a total of 9700 shares.

Do you recall the name that the last 300 shares were in?

A I do not, sir.

MR. WALKER: No further questions, except the offer that I made.

THE COURT: You are excused subject to recall.

(Witness excused.)

THE COURT: We will take our luncheon recess at this point, 2.15.

Remember my admonition: Don't talk about the case; don't let anybody talk about it with you.

(Jury excused.)

MR. WALKER: I have a further offer that the Government intends to make in connection with the testimony Mr. Doyle is advancing of good faith and lack of knowledge, and that is a prior proceeding before the SEC which occurred in 1960, and I have the official records of the SEC.

THE COURT: As to Mr. Segal?

MR. WALKER: As to Mr. Segal alone and not as to anyone else. I have an SEC release that I would offer. I can show it to your Honor.

THE COURT: Well, let me see it and I will rule on it.

What is your objection?

MR. DOYLE: That was a proceeding in which Mr. Segal expressly reserved his rights to deny the allegations of the charge, and it was admissible solely for the purposes of that proceeding, like a nolle decree.

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MR. WALKER: It's not being offered to prove the underlying facts; it is being offered to prove what Mr. Segal was aware of and what he had In his head.

THE COURT: It seems to me if it is not to prove the underlying facts I would exclude it.

(Luncheon recess.)

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AFTERNOON SESSION

2:20 P.M.

(Jury not present.)

MR. WALKER: Your Honor, before the jury comes in, I have the government's requests of charge. I know that your Honor is not interested in the so-called boiler-plate requests. Unfortunately, these are included here as requests 1 through 9.

However, I would ask your Honor to charge specifically the charge on accomplice testimony.

THE COURT: Well, obviously.

MR. WALKER: That is included here. And specifically draw your Honor's attention to request 10 which is the purpose of the securities act charge.

MR. DOYLE: Judge, I have spoken to co-counsel and I understand that counsel for Mr. Zuber have been able to pare down their requests substantially.

THE COURT: As I understand it, you asked me to rule on 1, 2 and 3, is that it?

MR. KIRSCHNER: Yes, your Honor, those are the ones; 1, 2 and 3. However, of course, we still reserve any objections to not giving the others, but those are the primary ones we are concerned with.

THE COURT: If you have objections as to the others,

jkh2

I have to rule on it. Either you put it to me or you don't.

You don't need to decide that now. We will talk about that at 4:30. Let's keep this show on the road, if we can.

MR. WALKER: Your Honor, I have withdrawn my application which was made before lunch.

THE COURT: When you checked the record you found out that Mr. Doyle was correct, didn't you?

MR. WALKER: Your Honor, I misunderstood his question, and I did.

Now, I wish to simply ask this witness Karfunkel one more question on redirect concerning a possible misunderstanding that may have arisen concerning directed trades, your Honor.

THE COURT: What's the question?

MR. WALKER: Mr. Doyle brought out on cross-examination that both were negotiated, a directed trade and a market trade, and I believe that the jury may be confused as to the difference between --

THE COURT: I don't think so. I don't think that is necessary on redirect.

Call your next witness.

MR. WALKER: Very well. If your Honor precludes me from that, I have no need for Mr. Karfunkel. My next

witness is the investigator, and also, I would like to read the one set of admissions that has been agreed on.

THE COURT: All right.

(Jury present.)

b2 MR. WALKER: Your Honor, at this time the government proposes to read certain testimony given by Mr. Seval before the SEC, the Securities and Exchange Commission, on May 6, 1970.

This is on page 13.

"A Acton asked me -- I don't know whether they came into New York -- I don't remember whether they came into New York or on my next trip out west that I met them again.

They asked me if I would trade the stock -- or, you know, get a broker to go in and trade this stock.

They told me they would give me -- I don't know the exact amount. I was under the impression that it was about 68,000 shares.

It might have been more as of record, but I had to return some stock to some people.

There was a gentleman by the name of William Morgan, whom I talked to on the phone.

I asked him about the whole position of the stock that's outstanding. He told me there was supposed to be

500,000 shares of free trading stock of which about 150 or 200 thousand shares is lost, stockholders are holding about 100,000 shares throughout the country.

"He also told me that he and a group of people who had invested at the rate of $2.50 a share was holding 77,500 shares and they invested $2.50 a share for that stock.

"Q Now, who was this?

"A He had a group of investors like Bill Morgan, who is one, and several others. I don't know the names of the people. They invested -- they paid Mr. Acton and Mr. Clegg $2.50 a share for the stock.

"Q I see.

"A And that he had 77,500 shares."

Turning to another portion of the testimony:

"Q Did Karen discuss with you on the phone the fact that they were going to start trading the stock?

"A They didn't discuss it with me. I spoke to Mr. Schiffman and Mr. Schiffman told me that they decided they would go along with the stock.

"Q Did you discuss with Mr. Schiffman what price you would like the stock be traded at?

"A Well, it was a very hot market at the time. I didn't discuss what price or anything like that. But every stock was high, and the market was great. It opened

up at 5-6. I wasn't even in town. I was away for about ten days at the time. When it opened up I wasn't even here.

"Q How about the Karen Company deciding on 5-6 price? I mean, they had really nothing to base it on except, well, Mr. Schiffman or somebody telling them -- they had to decide on the 5-6 price somehow.

"How was this 5-6 price determined?

"A There was a possibility that Francine Zahl offered $5 for the stock. There is a very strong possibility.

"Q Well, why would she offer $5 for the stock?

"A Well, she wanted to see what she could pick up at $5, the amount of shares.

I don't know this to be a fact. It's way back and I don't remember it."

Then discussion off the record. Then it returns.

While we were off the record, Mr. Segal explained to us on how the possibility of the 5-6 original bid and asked price was placed by Karen & Company.

"Q At this time, Mr. Segal, would you please just review for us what we discussed off the record?

"A Right.

They said --

"Q 'They' meaning whom?

"A Burney Acton and Mr. Clegg.

"Q All right.

"A They told me they had people that invested in this stock at $2.50 and $3 and they have been holding it for quite a while and they would like it to trade at $5 -- you know, open at $5 or better, otherwise they might have a great deal of trouble with the people that -- well, that is what they promised the people that were holding the stock.

"Q Now, at any time did you ask Mrs. Zahl to call up Karen & Company and to bid 5-6 or to bid $6 or $5?

"A I doubt that very much. I don't think so, but you can ask Mrs. Zahl.

"Q Mr. Segal, at this time will you please summarize what we have concluded must have happened?

"A Yes.

I was out of town at the time, but I am pretty certain that I instructed Francine Zahl to sell at either $5.50 or $6 figure.

"Q The stock was originally in the name of a Bernard Van Der Steen.

Does that name sound familiar?

"A Yes.

"Q Who was he?

"A He was a large stockholder in the company.

"Q Was he alive when this transfer was made?

"A Oh, yes. I wired him $1,000 for Burney Acton."

That is the extent of the testimony.

The government calls Joe Kelly to the stand.

J O S E P H A. K E L L Y, called as a witness by the government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q Mr. Kelly, how are you employed?

A I am employed as an investigator for the Securities and Exchange Commission.

Q How long have you been with the Commission?

A 16 years.

Q And what office do you work out of, sir?

A New York regional office.

Q Now, Mr. Kelly, have you participated in preparing jobs and summaries of documents in connection with this trial?

A I have.

Q And have you worked with another investigator in this task?

A Yes, I have.

Q And is that investigator's name Jack Steiner?

A That's correct.

Q Now, sir, specifically did you prepare a chart, a series of charts or summaries from certain documents which were subpoenaed in connection with a bank, with Western bank payments?

A Yes, I did.

Q I show you Government Exhibit 151A for identification and ask you if you can identify this chart?

b3

A Yes, I can.

Q Can you see it from there?

A Yes.

Q And is this chart, sir, a chart which is headed Proceeds of Sale of 5,000 Pioneer name of Scardino at Hornblower Weeks to Scardino, McKibbon, Acton and others?

A Yes, it is.

Q Now, sir, how was this chart prepared? How did you prepare this chart?

A The chart was prepared from, starting with the statements of Hornblower & Weeks, the customers' statements, and from there on showing all the payments made from the account. It also is made from copies of checks issued to the various individuals and deposits made in banks and to accounts, wires and so forth.

Q And, sir, is it your understanding that all of these documents have been received in evidence at this

trial?

A Yes, it is.

Q Specifically, sir, of the 36,000 --

MR. WALKER: I offer the chart.

MR. PAPE: Your Honor, we have no objection to this chart or the other charts if they are the charts we were shown this morning, and we have no objection to any of the charts.

I think they speak for themselves.

MR. KIRSCHNER: Your Honor, I might indicate we didn't see any charts when we were here this morning.

MR. WALKER: I'm sorry, I thought I had made them available to all counsel. They had been here.

MR.KIRSCHNER: I wasn't aware of that.

MR. NEWMAN: I wasn't told either, your Honor. I was here before 10 o'clock.

THE COURT: Well, look at the chart. Look at this one and see if you have any objection. I don't know why there seems to be such a breakdown in communications here all the time.

(Pause)

MR. NEWMAN: I have no objection.

MR. DOYLE: No objection.

MR. GREENBERG: No objection.

jkh10 Kelly-direct

MR. KIRSCHNER: No objection.

THE COURT: All right, received.

xx (Government's Exhibit 151-A received in evidence.)

THE COURT: I take it you have a smaller one that you can substitute into the record?

MR. WALKER: Your Honor, one will be prepared for that purpose.

THE COURT: All right.

Q Sir, I show you Government Exhibit 151-B for identification, another chart, and, sir, did you prepare this chart?

MR. PAPE: Your Honor, there will be no objection from this defendant as to competency. We can save time.

MR. GREENBERG: There might be no objection if we can just look at them.

THE COURT: Show them all to counsel before you show them to the jury.

MR. WALKER: Very well.

(Pause.)

MR. KIRSCHNER: We have no objection to these two, your Honor.

THE COURT: Look at them all and see if you have any objection to any of them.

(Pause)

MR. DOYLE: Your Honor, may I ask Mr. Kelly a question on the voir dire with respect to one of the charts?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DOYLE:

Q Mr. Kelly, directing your attention to Government's Exhibit 146 for identification, which has the heading Specified Pioneer Sales Proceeds, is it not a fact, Mr. Kelly, that this chart does not represent all of the transactions in Pioneer Development Corporation, either purchases or sales of Mr. Segal, but is only a selected sample of certain sales? Is that a fair statement?

A That would be all the sales we had records of through Orvis. Bros., Karen & Company.

Q It doesn't reflect any other purchases whatsoever, does it, sir?

A It does if they were in there.

Q But it doesn't purport to represent purchases made elsewhere?

A No.

Q Or sales?

A That's correct.

MR. DOYLE: Thank you.

jkh12 Kelly-direct

MR. GREENBERG: Your Honor, I think there is no objection if we can have a representation that each of the charts were prepared from exhibits received in evidence.

MR. WALKER: Yes.

THE COURT: You so represent?

MR. WALKER: Yes.

MR. NEWMAN: I have no objection.

MR. DOYLE: No objection, your Honor.

MR. KIRSCHNER: No objection.

THE COURT: All right, received.

(Government's Exhibits 151B, 151C, 146 and 147 received in evidence.)

xx

BY MR. WALKER:

Q Mr. Kelly, with regard to this particular chart, Government's Exhibit 151-A, does this trace the proceeds of a check for $36,459.53 which was issued by Hornblower & Weeks on November 10, 1969, in respect of rthe sale of 5000 shares of Pioneer in the name of Anthony Scardino?

MR. DOYLE: I have an objection to this, because the charts are self-explanatory. I think we are going to waste an awful lot of time.

THE COURT: I would think the witness can explain it.

Can you all see th chart?

THE WITNESS: I can't read it completely from here.

THE COURT: Just a moment, Mr. Kelly. Put the easel where everyone can see it.

You have got a copy. Explain to the jury what is shown on the chart.

Can you all see it now?

(Some jurors reply in the negative.)

THE COURT: Mr. Walker has copies.

MR. DOYLE: We would like copies, also.

MR. WALKER: I have certain copies here.

THE COURT: Give them to the jurors.

If you, Mr. Doyle, wish to, you can come over here where you can see it.

MR. DOYLE: Thank you, your Honor.

MR. WALKER: Some of these copies, your Honor, have exhibit numbers on them. Is there any objection?

THE COURT: I will rule on the objections.

Go ahead.

(Copies given to the jury.)

BY MR. WALKER:

Q Can you tell us, sir, what this chart depicts?

A This traces the funds of $36,459.53 paid by Hornblower & Weeks to George T. Parris. It traces it to the American National Bank of Denver. Then $32,350 to the account of Richard E. McKibbon, a cashier's check, in the amount of $32,350; then $3650 goes to the Union Bank of Tucson, account of George Parris, which was a transmittal of funds, and George Parris and Richard McKibbon received cash of $459.53.

Now, from the $32,350, cashier's check of Richard McKibbon, there was deposited in the Valley Bank of Nevada $32,350, and that broke down into a check, a cashier's check issued to Bob Clayton in the amount of 2,500, a cashier's check to Tony Scardino for $4000, a cashier's check to Sam D. Sarno for $2,750, and a cashier's check

$13,000 to Burney Atkin, which really should be Acton. It was misspelled on the original check.

Q What is the amount of that check?

A I don't have it any further than that, down to $13,000, a cashier's check, to Burney Acton, and now out of the cash, $459.53 a cashier's check was issued to Tony Scardino in the amount of $450.

Q Now, sir, turning to the far left part of the chart -- and I'm not sure that it is on your copy, it's off the edge -- does that chart reflect a payment from the First National Bank of Nevada to Crocker Citizen's National Bank, account A. C. Enterprises of $10,000 on November 13, 1969?

I show you this chart, sir.

A It does not show on this one here.

Q No, but it is on this one right here?

A Yes, it is a continuation which did not take on my copy.

THE COUR: You explain it, whether it is on your copy or on the chart?

THE WITNESS: May I step down, your Honor, and read it?

THE COURT: Yes.

Q Will you stand to one side so the jury can see.

Stand over here.

A This $10,000, from this $10,000 a wire transfer took place to the Crocker National Bank for the account of A. C. Enterprises.

Q In the amount of $10,000?

A $10,000.

Q Mr. Kelly, do you have any copies of Government's Exhibit 151-B, the proceeds of the sale of the 6000 shares?

A What is the amount of money involved?

Q The first check is $30,441?

A Yes, I have.

Q And the second one is $16,347?

A Yes.

MR. GREENBERG: May we have copies?

MR. PAPE: Is this one 151-B, your Honor?

MR. WALKER: Yes.

THE COURT: I can't see it.

MR. WALKER: Would your Honor like a copy of the exhibit?

THE COURT: Thank you.

Q Mr. Kelly, with reference to chart 151-B in evidence, would you please explain this chart denominated Proceeds of Sale of 6000 Pioneer name of Scardino, at

Hornblower, Weeks to Scardino-McKibbon?

A Hornblower & Weeks issued a check fro $30,441 to Tony Scardino. It, in turn, went to the American National Bank. From that a cashier's check was issued to McKibbon in the amount of $15,441; a cashier's check was issued to Tony Scardino in the amount of $5000; $10,000 was wired to the Crocker Zitizens National Bank, account of A. C. Enterprises.

From the $15,441 that went to McKibbon originally, $13,850 was deposited in the Valley Bank of Nevada for the account of Richard McKibbon, and Richard McKibbon received cash of $1591.

The other one for $16,347.25 was issued by Hornblower & Weeks to Tony Scardino. It went to the First National Bank of Nevada. From that $14,000 was wired to the Crocker Citizens National Bank, account of A. C. Enterprises, and $1000 went to the Fidelity Bank & Trust to the account of Tony Scardino.

Q Mr. Kelly, I show you Government's Exhibit 151-C in evidence and ask you, first of all, if you have copies of that for the jurors?

A Yes.

Q Mr. Kelly, I show you now 151-C, which is entitled Part of Proceeds of sale of 13,900 Pioner name of

McKibbon at Hornblower & Weeks to Scardino and McKibbon.

I ask you to tell us what that chart states?

A Hornblower & Weeks issued a check for $79,150 to Richard McKibbon on 12-16-69. That went to the American National Bank of Denver, Colorado. From there it went to Richard McKibbon, cashier's check, in the amount of $53,000, and a wire of funds to the First National Bank, Reno, for the account of Richard McKibbon in the amount of $20,000, and a wire of funds for $5000, Fidelity Bank & Trust, Houston, Texas, account of Anthony Scardino.

The $53,000 cashier's check was deposited in the First National Bank of Nevada.

Q Mr. Kelly, I show you Government's Exhibit 150-A for identification and 150-B for identification and ask you if you can identify these documents? What is 150-A for identification?

A 150-A is a graph chart showing a price low bid and high offer that appeared in the so-called pink sheets for Pioneer Development from October 29, 1969, up to and including February 25, 1970.

Q Sir, how was this chart prepared?

A The chart was prepared from the pink sheets, published by the National Daily Quotation Service.

Q Did you prepare that chart?

A I did.

Q I show you Government's Exhibit 150-B for identification and ask you if you can identify that?

A Yes, I can.

Q What is it?

A That is a chart showing a daily bid and asked broken down as to the various brokers that appeared in the pink sheets on those days, for the period October 29 through December 31, 1969.

Q Have you checked those figures against the actual pink sheets?

A I have?

Q Did you find them to be the same?

A I found them correct.

MR. WALKER: I offer these two documents.

VOIR DIRE EXAMINATION

BY MR. DOYLE:

Q Do you have the pink sheets in court with you today?

A No.

Q Are they in the Court House?

A No.

Q Where did you look at them?

A Down at the offices of the National Daily

Quotation Service.

Q And when did you do that, s ir?

A Approximate two weeks ago, three weeks ago.

MR. DOYLE: Thank you.

No objection.

(Government's Exhibits 150-A and 150-B were received in evidence.)

xx MR. WALKER: I have no further questions of this witness.

I would like to call another witness, the man who worked with this gentleman for the purpose of offering the other charts.

THE COURT: Any cross-examination?

MR. DOYLE: No, your Honor.

MR. PAPE: I do, your Honor.

XX CROSS EXAMINATION

BY MR. PAPE:

Q Is it Mr. Kelly?

A Right.

Q On Government's Exhibit 151-B it shows one check of $16,347.25 going to Tony Scardino. Under the words Tony Scardino are the words McKibbon power.

Do you know what that means?

A Yes, Mr. McKibbon signed Mr. Scardino's name

and under it wrote "power of attorney."

Q Do you know where that was done?

A I do not know where it was done.

Q Are you familiar with the reputation of the brokerage firm Hornblower & Weeks?

A Oh, yes.

Q What is that reputation?

A It always was the best as far as I am concerned.

Q The bext?

A That is right.

Q During the course of your investigation for the SEC have you come to inow Richard McKibbon?

A No.

Q So you know where we can find Richard McKibbon?

A No, I do not.

MR. PAPE: No further questions.

MR. WALKER: You are excused, Mr. Kelly.

(Witness excused.)

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J O H N R. S T E I N E R T , called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALKER:

Q How are you employed?

A I am an investigator for the Securities and Exchange Commission.

Q And, sir, how long have you been with the SEC?

A 15 years.

Q Sir, did you participate with Mr. Joe Kelly in preparing certain charts and summaries in connection with this case?

A Yes, I did.

Q Specifically, sir, did ou prepare a chart in connection with certain deposits of moneys at the Republic National Bank and certain checks that had been issued by Orvis Brothers and Karen & Company?

A Yes.

Q I am referring specifically to Government's Exhibit 146 in evidence, which is entitled Specified Pioneer Sales Proceeds?

A Yes.

Q Now, sir, do you have any copies of this chart

available at this time?

A No, I don't, sir.

Q Let me move this up a little closer to the jury.

First of all, tell us how you prepared the charts?

A Yes. We took the Orvis Brothers statement for the Alan Segal account; we took the Orvis Brothers statement for the Francine Zahl account; and we took the Karen & Company statement for the Francine Zahl account and we listed the checks that were paid out of those accounts under the columns as they are headed. Then we took the --

Q Let me stop you there, sir.

Are these documents all in evidence to tbe best of your knowledge?

A The accounts are in evidence, yes, sir.

Q Then what did you do?

A Then we took the Republic National Bank account for Bona Fide Productions and the various deposit slips.

Then we took the Republic National Bank account of Alan Segal and the various deposit slips; the third column, the other disposition, was moneys that we could not find going into either one of those two account and they are designated next to the top columns. One is the

money that went into the Republic National Bank account of Bona Fide.

Q You are referring to the asterisk? If there is one asterisk?

A Yes. The two asterisks, the money that went into the Republic National Bank account of Alan Segal, where there are two, and on the four asterisks, one, sir, was a check for $14,724, and on or about that day there was $12,724 deposited in the Republic National Bank to the account of Bona Fide, and the other $2000 went in the other disposition account of Francine Zahl.

Q How much money was issued by checks on these various accounts, according to your chart?

A $335,426.59.

Q Is this total figure of $335,426 accounted for in the various boxes contained beneath that?

A Yes.

Q $335,426.59?

A Yes.

Q Was this chart prepared from documents which you understood to have been received in evidence at this trial?

A Yes.

Q Mr. Steinert, I show you Government's Exhibit

147 in evidence, which is entitled To Specified Transfers of Pioneer Stock, Nevada Agency & Trust, October and November, 1969?

A Yes, sir.

Q And I ask you, sir, first of all, from documents was this chart prepared?

A This was prepared from the transfer records of the Nevada Agency & Trust Company.

In addition to that, your Honor, we will also offer the testimony of the co-defendant Finkelstein. Mr. Finkelstein has indicated through his lawyer that he is not going to testify in the trial, but that he would testify if there was a severance granted. He is crucial; he is the link between Mr. Zuber and Mr. Gardner and Mr. Segal.

The testimony indicated that Mr. Gardner called Mr. Finkelstein and then Mr. Finkelstein apparently got in touch with Mr. Zuber, that when he got in touch with Zuber he stated to Mr. Zuber the following, that he had received a call from Gardner and that Gardner wanted him, Finkelstein, to collect some money from some people in Reno. That was all that was discussed, and that is what he told Mr. Zuber, that they were going to this meeting in Reno to collect some money. In addition to that, he would testify that he had conversations with Mr. Zuber about the mine and that he specifically told Mr. Zuber that the mine was very valuable, a valuable site, and he related to Mr. Zuber the information concerning the assay reports and all the favorable information concerning the mine.

In addition he would also testify that at that Reno meeting there were no threats and he would testify

that Mr. McKibbon was being very evasive when Mr. Zuber asked him where the money was and what happened, that there were no guns. That would be his testimony with respect to that.

He had also indicated that he told Mr. Zuber that this stock did not have to be registered, that it was exempt under the grandfather clause. That would be his testimony, your Honor, and on that basis we move for a severance for Mr. Zuber.

THE COURT: Make your motion for the judgment of acquittal. I will reserve on that motion for the time being.

MR. KIRSCHNER: With respect to the motion for judgment of acquittal, your Honor -- let me save the conspiracy for last --

THE COURT: I think your motion is premature which you just made. But go ahead.

MR. KIRSCHNER: With respect to Count 17 through 20, Counts 17, 18, 19, 20, 21, 22, 23 are alleged to have occurred at a time prior to Zuber ever entering the picture. He came into the situation about December 25, according to the testimony.

Those counts allege dates prior to his coming into the picture, and the most recent date is November 11,

1969.

THE COURT: What do you say, Mr. Walker?

MR. WALKER: Which counts?

MR. KIRSCHNER: 17 through 23.

MR. WALKER: Your Honor, 17 through 23, although they occurred prior to Mr. Zuber's entry into the conspiracy and scheme,are attributable to Mr. Zuber once he joins the scheme.

THE COURT: Yes, Pinkerton.

MR. WALKER: Yes. Once he joins the conspiracy, all prior and future acts or crimes become attributable to the person who joins the conspiracy.

MR. GREENBERG: We're not talking about the conspiracy.

THE COURT: We're talking about substantive crimes committed pursuant to the conspiracy. What about that?

He is liable if he is a member of the conspiracy?

MR. KIRSCHNER: It is my understanding he adopts the overt acts that have occurred during the course of the conspiracy, but not the substantive crimes.

THE COURT: Do you have a case?

MR. KIRSCHNER: I don't have it at my finger-

tips, but I will have one. I recall reading cases to that effect.

Pinkerton refers to acts committed subsequent to, and not prior to.

THE COURT: I wouldn't think so. I am almost certain that once you join a conspiracy you are bound by all of the acts of the co-conspirators committed any time in furtherance of the conspiracy, even though they were committed before one joined, and that would refer to the substantive crimes. I am willing to be convinced.

MR. KIRSCHNER: I make that motion also as to Counts 24, 25 -- 26 and 27 are out -- so I make that motion with respect to Count 28 also, nothing to link this defendant with Mr. Robert Meyer, and also Count 29.

MR. WALKER: Your Honor, 28 is a count dated December 31, 1969, which follows the Reno meeting.

Count 29 deals with the stock that was sold to Allen Grant specifically by Mr. Zuber.

MR. KIRSCHNER: I will treat that during the argument on Count 1.

THE COURT: I will deny it.

MR. KIRSCHNER: I also make a motion for judgment of acquittal on Counts 30 -- 31 is out -- 32, 33, 34 -- 35 and 36 are out -- I make it as to 37 -- 38 is out -- 39,

40, 41 -- 42 is out -- 43, 44, 45, on the same grounds as the previous motions with respect to those counts that occurred prior to Mr. Zuber's joining the alleged conspiracy.

THE COURT: Denied.

MR. KIRSCHNER: With respect to the conspiracy count, your Honor, we move for a judgment of acquittal on the ground that there has not been any independent evidence of this man's acts and declarations which would demonstrate that he knowingly joined the conspiracy with knowledge of its purpose, and that knowledge he must have had at the Reno meeting was that he knew why Mr. Segal did not want those shares sold. He had to have known that Mr. Segal did not want the shares sold because those shares being sold on the West Coast hurt the market, were affecting the price of the stock on the East Coast.

There has been no evidence to that effect at all.

THE COURT: Denied.

MR. KIRSCHNER: May we make other motions after?

THE COURT: No, make your motions now.

MR. KIRSCHNER: I would move to strike all the testimony in the case concerning people observing a gun on Zuber on the grounds, one, it is highly prejudicial,and,

two, that that evidence was not offered in furtherance of this particular conspiracy.

Each of the witnesses testified that they were not threatened by the gun; the gun was not displayed, and that the people that saw the gun were Mr. Acton and Mr. Clegg.

The meeting occurred with Mr. McKibbon and Mr. Scardino, and there was no gun there. We submit to the Court that the evidence of the gun does not go to show that there were threats of force and violence used to retrieve the stock.

THE COURT: Denied.

MR. KIRSCHNER: In addition to that, we move to strike the allegation in the indictment contained in Paragraph 4, that at all relevant times the defendants Finkelstein, Levine, Segal and Zuber were not regularly employed. There has been absolutely no evidence to that effect in this case whatsoever.

MR. WALKER: Your Honor, may I be heard as to that? As far as that is concerned, it is in the introductory portion of the indictment, which is incorporated by reference into the various counts. It becomes part of the various counts because there is a description of Pioneer Development and then the various roles or non-

roles of the individuals involved. The Government submits that the proof has fully substantiated this, that there is no evidence that Zuber was regularly employed. There is evidence to the effect that he was not regularly employed by virtue of his conduct in this case.

THE COURT: There is sufficient circumstantial evidence.

Denied.

MR. DOYLE: Your Honor, I overlocked one motion. It is a motion to dismiss Count 1 because of a material variance in the indictment, in that it recites a single conspiracy, whereas the proof shows two conspiracies, one, taking the Government's case, between Michael Clegg and Burney Acton to sell shares with a promise not sell any on their own, and, secondly, an entirely different conspiracy between Clegg, Acton, Scardino, Zuber and McKibbon.

We submit the proof establishes two entirely separate conspiracies, whereas the indictment charges one conspiracy.

MR. KIRSCHNER: All co-defendants have joined in that motion, your Honor.

THE COURT: Yes.

MR. KIRSCHNER: We have one offer of proof that we would like to make with regard to the polygraph evi-

dence, and we would like to do that as opposed to getting the jury in here first.

Can we make that offer now?

THE COURT: Yes.

MR. KIRSCHNER: At this time we request to introduce results of a polygraph examination that was taken of Mr. Zuber, and I would like to make an offer of proof now.

THE COURT: You made this motion before trial.

Do you have anything further to say that you didn't say then?

MR. KIRSCHNER: Your Honor, I did not --

THE COURT: It is all part of the record. I ruled on it and denied it.

MR. KIRSCHNER: May I make an offer of proof?

THE COURT: Wasn't your offer of proof within your motion?

MR. KIRSCHNER: No.

THE COURT: I understood it was.

MR. KIRSCHNER: We didn't indicate what the specific questions were and the specific answers. This is a very short list that I would like to read into the record.

THE COURT: Why don't you put it into the record

and save time. We will take it as your exhibit.

MR. KIRSCHNER: At this time we offer a polygraph examination of Mr. Zuber, results of a polygraph examination of Mr. Zuber dated November 9, 1974, as Defendant Zuber's A for identification.

MR. WALKER: We object to it on the grounds stated in the pretrial motions.

THE COURT: Yes. Offer it simply to make yoru record.

MR. WALKER. It will remain as a number for identification?

THR COURT: Yes. I preclude showing that to the jury, however.

Do you understand?

(Defendant Zuber's Exhibit A was marked for identification.)

xx MR. NEWMAN: Your Honor, I move to dismiss the indictment on the ground as far as the conspiracy charge is concerned that there is insufficient evidence. I make the same motion on the substantive counts as to the insufficiency of the evidence.

I also move, as did the defendant Zuber, on similar grounds for a severance for the defendant Finkelstein on the ground that the defendant Zuber if he

were permitted to testify would also testify to facts of an exculpatory nature and he is not going to testify at this trial.

THE COURT: I deny your motion as to the severance point and also on the other point.

Let me hear how you hold Mr. Levine in the case?

MR. WALKER: Does Mr. Scardino have any motions?

MR. PAPE: We follow Mr. Levine.

THE COURT: I would like to hear from you.

MR. PAPE: On behalf of the defendant Anthony Scardino we move for a judgment of acquittal on Count 1 of the indictment on the grounds there is insufficient evidence that Mr. Scardino knew of any scheme or that he participated in any scheme. As a matter of fact, from the Government's case it appears that Mr. Scardino's actions were at cross purposes of any conspiracy in this case, and for that reason we move for a judgment of acquittal on Count 1.

THE COURT: Denied.

MR. PAPE: We also move for a judgment of acquittal on Count 1 for the reason that the Government's evidence does show a material variance with the allegations of the indictment. I would argue that the Government's evidence shows not one, not two, but more conspiracies, all

ms

of which Mr. Scardino had nothing to do with, such as stock manipulation.

There was a western conspiracy in which shares were sold at cross purposes with the Eastern conspiracy. There was a third conspiracy to collect money.

THE COURT: Denied.

MR. PAPE: On Count 4 the defendant Scardino moves for a judgment of acquittal on the grounds that the Government offered insufficient evidence that the defendant had any knowledge that no registration statement had been filed or that one was required.

THE COURT: Denied.

MR. PAPE: We offer the same motion, for a judgment of acquittal on Counts 11, 12, 13, 14 and 16 on the grounds that there is insufficient evidence that the defendant had any knowledge that no registration statement had been filed or that one was required.

THE COURT: Denied.

MR. PAPE: We move for a judgment of acquittal on the remaining counts of Counts 30 through 46 on the grounds that there is insufficient evidence that this defendant Scardino had any knowledge of a scheme or participated in any fraud or misrepresentation.

THE COURT: Denied.

MR. PAPE: We would also offer a motion for a dismissal of the complete indictment due to the inordinate delay in bringing the case to trial. I would first call to your Honor's attention the general prejudice that my client and the other defendants have suffered because of the delay.

THE COURT: You are talking about pre-indictment delay.

MR. PAPE: Yes.

THE COURT: I don't think anyone can say there was delay in bringing it to trial or trying it?

MR. PAPE: No. There was a great deal of general prejudice that stems from the fact that much of the Government's evidence comes from the testimony of co-conspirators or non-co-conspirators who had in fact bought and sold this unregistered stock. These people testified before grand juries here in the Southern District of New York anywhere from three and a half to four and a half years after the events had taken place. They knew that they themselves could be indicted in these cases. I think that coupled with the excessive leading nature of all the testimony in the grand jury would indicate that these people testified not as to objective independent recollection of what happened, but the grand jury

testimony speaks for itself page after page of "Yes, sir," "Yes, sir, "Yes, sir," in response to leading questions, and all they did was rubber stamp the Government's version of this case. Then five years after the events took place, prior to their testifying here, these witnesses were given copies of their grand jury testimony to read, and I think that the extreme prejudice that comes from their testimony in this court becomes flavored and tainted by the leading nature of the Government's version as they derive it from reviewing the grand jury statements and is of extreme prejudice, that there was no true, objecive testimony from any of the witnesses.

That is my general prejudice, that derives from this unnecessary delay in procuring any indictment in this case, and on all those grounds I move for a dismissal of the indictment.

THE COURT: Denied. That simply comes to an argument of what this jury might believe or not believe.

MR. PAPE: I would also like to reserve my offer of proof on the specific prejudice that my own client, Mr. Scardino, has suffered because of fires and burglaries in his office within the last year and a half. I think tomorrow I will have Houston police records to establish that these burglaries and fires did take place, that they

were reported, and that this documentary evidence, which could be of an exculpatory nature, was lost. I would like to reserve my offer of that evidence.

THE COURT: Well, of course, that would come up as part of your case. Here we are concerned with the Government's case.

Do you have some further motions in that respect, with respect to the Government's case? I don't want to foreclose you from that.

MR. PAPE: No, your Honor.

THE COURT: All right.

MR. PAPE: I assume you are denying that motion?

THE COURT: Well, there is no motion. You got an offer of proof that you got to make that is pre-requisite to your motion.

MR. PAPE: May I reserve and make that motion at the end?

THE COURT: You may reserve and make that motion at the appropriate time.

MR. PAPE: I will finally move to sever Mr. Scardino from this trial because, as I mentioned, I think the Government's case has shown there was not one conspiracy, but at least two or three conspiracies. Mr. Scardino's role according to the Government's evidence was at cross

purposes with that of the co-conspirators. I think he is unduly prejudiced by all the evidence that has come out concerning threats of violence, concerning schemes to manipulate in the East, in which he never participated. There is no evidence that he took part in any of that or sanctioned it, and I think it is of extreme prejudice to him.

THE COURT: Denied.

MR. WINOGRAD: Your Honor, the defendant Levine at this point in the trial moves for a judgment of acquittal with regard to all the counts in the indictment against him.

THE COURT: How would you hold him in the conspiracy?

MR. WALKER: Essentially, as the evidence came out at this trial in respect of one particular count, that changed dramatically the Government's view of the case against Mr. Levine. The testimony of Robert Meyer before the grand jury was essentially that Mr. Levine was instrumental, and, indeed, misleading in his statements concerning Pioneer Development Corporation.

Mr. Meyer, when he testified at this trial did not give the same testimony as he gave in the grand jury concerning Mr. Levine. I talked to Mr. Meyer about that

and he reflected very carefully about it and reflected very carefully on his grand jury testimony, and gave the testimony that he gave in court. As a result, your Honor, it is the Government's position that while the evidence has shown that Mr. Levine sold 2000 shares of Pioneer Development Corporation --

MR. WINOGRAD: 200 shares --

MR. WALKER: -- 200 shares of Pioneer Development Corporation and that while there were conversations with Mr. Gardner that Mr. Gardner testified to, and that he was present when Mr. Segal was touting Pioneer, while the Government believes there is evidence against Mr. Levine, we do not believe, however, at this time that there is evidence from which a jury could conclude that Mr. Levine was guilty beyond a reasonable doubt.

THE COURT: As to the conspiracy count?

MR. WALKER: As to the conspiracy count in the indictment, yes, sir.

THE COURT: I don't think so, either. Motion granted as to the conspiracy count.

Now, what about the substantive counts?

MR. WALKER: Your Honor as far as the substantive counts are concerned, the defendant Levine is charged with essentially Section 17-A, which is a fraud in connec-

tion with the sale of securities, and it is the Government's position that with regard to this particular count, with regard to the counts involved under Section 17-A concerning Mr. Meyer, that there is sufficient evidence because of Mr. Levine's being with Mr. Meyer at the time that Mr. Segal was making these representations, and the aiding and abetting that occurred with respect to that.

How do you show that he knowingly participated in the sale of this stock?

MR. WALKER: Your Honor, the evidence here is that individuals purchased --

THE COURT: What do you have to show and how do you show it, is what I am asking

MR. WALKER: The Government has to show that from which a jury could conclude guilt beyond a reasonable doubt.

THE COURT: What facts?

MR. WALKER: The facts as they exist here are that there --

THE COURT: No, the facts that you have to establish, and how have you established them. That is what I want to know.

MR. WALKER: We have to show tha this individual had knowledge of the scheme and that he acted in further-

ance of the scheme.

THE COURT: Knowingly participated in it?

MR. WALKER: Yes.

THE COURT: Show me how you show that?

MR. WALKER: The evidence that has been shown here is that this individual sold stock, 200 shares of stock, through Economic Planning, derived a profit from it, and that he was present when Mr. Segal was touting the stock to Mr. Meyer, and that he, in effect, joined in that tout.

THE COURT: What did he say while Segal was saying this? Why wasn't he just a mere bystander as far as the evidence goes.

MR. WALKER: Well, it is the Government's position that being --

THE COURT: Not your position -- the evidence.

MR. WALKER: That it is the Government's position that the evidence shows that he was with Mr. Segal at the office and again at the bar when Mr. Segal was making these representations concerning Pioneer.

THE COURT: What evidence is that that he knew this was false.

MR. WALKER: Your Honor, with regard to this particular count I think that it is close nough so that

it possibly could be treated on the same basis as the conspiracy count'

THE COURT: Motion granted.

MR. WINOGRAD: Thank you, Judge.

Am I to understand that all the counts in the indictment against Levine are dismissed?

MR. WALKER: I believe that a directed judgment of acquittal includes the mail fraud also.

THE COURT: Yes. A directed judgment of acquittal is granted.

Mr. Doyle, will there be a defense?

MR. DOYLE: Yes, your Honor, there will be.

THE COURT: Bring in the jury.

MR. WALKER: If Mr. Levine and Mr. Winograd intend to leave, they should leave now, and not in the presence of the jury.

THE COURT: Yes, leave now, would you, Mr. Winograd?

MR. WINOGRAD: Yes.

MR. WALKER: Would your Honor instruct the jury that the case as to Mr. Levine has been withdrawn from their consideration?

THE COURT: At the appropriate time, which is not now.

Proceed.

MR. WINOGRAD: Judge, if Mr. Levine leaves, may I sit in the courtroom?

THE COURT: I prefer you leave. You are liable to get indicted.

MR. WINOGRAD: The way Mr. Levine got indicted.

(Mr. Winograd and the defendant Levine leave the courtroom.)

THE COURT: Can you give me some idea how long your defense will be?

MR. DOYLE: As brief as I can make it, your Honor.

(Jury in box.)

MR. DOYLE: Your Honor, the defendant Alan Segal calls Michal Grimes.

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M I C H A E L G. G R I M E S , called as a witness on behalf of the defendant Segal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DOYLE:

Q Mr. Grimes, where do you live, sir?

A 3159 Voltar, Tarzana, California.

Q Is that a suburb of Los Angeles?

A Yes, sir.

Q What is your employment at the present time, sir?

A Furniture business.

Q Directing your attention to 1969 and 1970, what was your employment?

A Stockbroker.

Q How long had you been a stockbroker?

A 12 years.

Q Were you with a firm during the period 1969 and 1970?

A Yes, sir.

Q What firm was that, sir?

A Grimes, Hopper & Messer.

Q Were a principal of that firm?

A Yes, sir.

Q Would you describe to the jury what type of firm it was, sir?

A Primarily over-the-counter security trading and some retail business.

Q The firm was located where, sir?

A 1 Wilshire Boulevard, downtown, Los Angeles.

Q Did there come a time in the fall of 1969 when you met a gentleman by the name of Michael Clegg?

A Yes, sir.

Q When and where did you meet him, sir?

A At my home approximately in September or October.

Q Who else was present to the best of your recollection?

A My wife.

Q Anyone else?

A Not to my knowledge.

Q Would you state for the Court and jury to the best of your recollection what was said at that time and who said it?

A Mr. Clegg stated that he had a corporate shell that he had entered a mining development thing into and he wanted to know if I would like to trade it and do some retail business.

Q Did you make any response to that, sir?

A I told him I was interested and at a future date we could talk about it in my office.

Q Did Mr. Clegg describe to you any of the assets of that company, sir?

A Yes, he said that they had an audited financial statement coming out, and I asked for an audited one, and at that time I had an unaudited one supposedly.

Q Just give the conversation?

A He told me about projected earnings and so on and so forth of the mine and he said that they actively had --

MR. WALKER: I object to this as hearsay.

THE COURT: What Clegg said?

MR. WALKER: Yes.

THE COURT: Overruled.

Q On this occasion was there any discussion of the names of individuals? In whose name the stock was to be sold? To be placed?

MR. WALKER: Objection as to form.

THE COURT: Sustained as to form.

Q Was there any mention at this meeting of the names of any other individuals?

A No, sir.

Q Did there come a time when you had another

meeting with Michael Clegg?

A Approximately a week later.

Q Where was that meeting?

A In my office.

Q Who was present?

A I'm not quite sure. Mr. Clegg was there.

MR. WALKER: Could I have the date?

THE WITNESS: I have no idea of any dates. This was a pretty long time ago.

Q Think carefully about this question:

At this time to your knowledge was the stock of Pioneer Development Corporation trading on the over-the-counter market on the occasion of this conversation?

A Yes, I think it was.

Q Is that your best recollection?

A Yes.

Q Now, tell the jury what was said and by whom on that occasion?

A Well, Mr. Clegg said he had some close associates or friends that would be selling some stock in the near future and he wanted to know at that time if I would make the market in it, and as I recall, I told him that it looked like it was an East Coast market, and we went into various other aspects of it. I at that time asked for

the financial statement, an audited one, and he said it would be forthcoming in a week or so.

Q Did he give you the names of any of the individuals whom he described as close associates?

A Yes, he gave me three or four names at the time.

Q Do you recall them at the present time, sir?

A There was Mr. Brown.

Q Do you recall any others?

A Orloff.

Q Orloff?

A Yes, and there were two other people. If you will give me a piece of paper --

Q I show you Defendant Segal's Exhibit O for identification and ask you if this refreshes your recollection as to the names of any of the other individuals whom Clegg described to you as close associates?

A Walker.

Q Jay Walker?

A There was Joe Orloff and and Warren Brown, his mother, and Gunther Wells.

MR. WALKER: Did the witness say his mother?

THE COURT: Whose mother?

THE WITNESS: Excuse me a second. Eva Marie Brown.

Q Is that the person you described as Mr. Brown's mother?

A Yes.

Q Subsequent to the conversation with Mr. Clegg that you have just described, did you thereafter conduct certain transactions in Pioneer Development Corporation stock?

A We sold stock for individuals in Pioneer Development.

Q Do you recall how any of the certificates were delivered to you?

A Some of them came by mail and I think some of them were hand delivered.

Q By whom, sir?

A Mr. Brown brought me some stock. Mr. Orloff brought some stock in for Mrs. Orloff.

Q Did Mr. Clegg bring you any stock?

MR. WALKER: Objection. Leading.

THE COURT: Sustained.

A I thought he brought in Walker's stock.

Q Is that your best recollection?

A Yes.

Q Do you have the confirmations with respect to the transactions that you have testified you executed at

the present time?

A I don't have them with me right now.

Q When was the last time you saw them?

A Oh, I looked at them for the SEC I think in 1969 or 1970.

Q Did you take them back or did you leave them with the SEC?

A Oh, we had the originals. We gave them copies.

Q Did you bring the originals with you?

A No.

Q Did you bring any copies of confirmations with you?

A No.

Q Where are they, sir?

A The only copies I saw are in a file here somewhere.

Q In the Court House?

A That is right.

Q What about the checks with respect to sales of stock in these accounts, the checks written on your firm? Do you have those, sir?

A No, sir.

Q When was the last time you saw those?

A I think when I copied them for the SEC.

Q Did you prepare a chart outlining the transactions on the basis of confirmations that you have described?

A Yes, they came off my blotters.

Q Referring to Defendant's Exhibit O for identification, can you identify that as the chart?

MR. WALKER: We have no objection.

A Mr. Hopper prepared the actual chart.

Q Are you familiar with the chart?

A Yes.

MR. DOYLE: I offer it in eviddence, your Honor.

MR. WALKER: No objection.

(Defendant Segal's Exhibit O was received in evidence.)

MR. DOYLE: May I read from this?

THE COURT: Yes.

(Mr. Doyle reads from Defendant Segal's Exhibit O in evidence to the jury.)

MR. DOYLE: No further questions, your Honor.

jkh 1 Grimes-cross

T5 MR. WALKER: Is there anyother cross-examination by any of the others?

THE COURT: Any defense counsel wish to cross-examine?

MR. KIRSCHNER: No, your Honor.

MR. PAPE: No, your Honor.

MR. NEWMAN: No.

THE COURT: All right.

CROSS EXAMINATION

BY MR. WALKER:

Q Mr. Grimes, did you have conversations with these various individuals that you have named from time to time during this period?

A Vaguely, relating to conversations, I vaguely remember talking to most of them, yes.

Q These individuals did sell stock mostly in December of 1969, is that correct?

A Yes, I think that is right.

Q As reflected on the chart?

A Yes, sir.

MR. WALKER: I have no further questions, your Honor.

MR. DOYLE: Nothing further, your Honor.

THE COURT: You are excused. Next witness.

(Witness excused.)

MR. DOYLE: Your Honor, may I read a stipulation to the jury before I call Mr. Myron Buttram to the courtroom?

THE COURT: Yes.

MR. DOYLE: Your Honor, there is a stipulation between the government and the defendant Alan Segal that Jay Walker would testify, if called as a witness, that in mid-December, 1969, he sold 1,000 shares of Pioneer at 6-1/2 dollars per share through an account at Grimes Hooper & Masser for the benefit of Michael Clegg and Burney Action.

MR. WALKER: So stipulated.

MR. DOYLE: Thank you, your Honor.

M Y R O N B U T T R A M, called as a witness by the defendant Segal, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DOYLE:

Q Mr. Buttram, where do you live, sir?

A Oklahoma City.

Q And what business are you in?

A Mining and ore production.

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Q Now, how long have you been in that business, sir?

A All my working life.

Q Directing your attention to the fall of 1969 did you know at that time a gentleman by the name of Burney Acton?

b2 A Yes, I did.

Q And did you also come to know a gentleman by the name of Michael Clegg?

A Yes.

Q And at that time, that is, in the fall of 1969, were you the owner of a certain patent?

A My family was.

Q Would you describe what that patent was, sir?

A It was a mill for processing of ore.

MR. WALKER: Your Honor, I would object on the grounds that this particular line of testimony is irrelevant and could I see your Honor at side bar?

THE COURT: Yes.

(At side bar.)

MR. WALKER: Your Honor, my understanding is that this witness is being offered in support of defendant Segal's claim of lack of knowledge and good faith with regard to this stock.

Now, Mr. Doyle is seeking to have this man

testify to his mining process, to the whole process which he uses, which is a legitimate process, and which this man uses extensively.

My understanding is that this process was explained to Mr. Segal on November 18th or 24th or thereabouts, well after the stock had started trading, and that he didn't meet this individual until January 10th or January 15th, 1970, long after the stock was trading, and my offer would be to preclude this man's testimony except insofar as it relates to knowledge that could be shown attributable to the defendant Segal in specific telephone conversations and not for a general exposure on his mining activities, and would ask for a limitation of the proof to the specific conversations that he had with defendant Segal.

MR. DOYLE: Your Honor, I will be happy, in the interests of expediting this, to direct his attention specifically to conversations with Mr. Segal.

THE COURT: All right.

(Open court.)

Q Mr. Buttram, the last question is withdrawn. I am going to direct your attention to November 24, 1969, and ask you whether you had a telephone conversation on that occasion with Mr. Alan Segal?

A Yes, I did.

Q Do you see Mr. Segal here in the courtroom today?

MR. WALKER: Your Honor, could we have the foundation for this call laid, as with the telephone conversations as the government offered as to who he knew?

THE COURT: Yes.

MR. DOYLE: As to what? Excuse me?

THE COURT: Voice recognition.

MR. DOYLE: Oh, very well.

Q Did you have a conversation with a gentleman who said that his name was Alan Segal?

A He didn't say he was Al Segal. I was introduced to him by Mr. Burney Acton who placed the call and asked me to talk to Mr. Segal.

Q Mr. Acton told you that you were on the telephone with Mr. Segal?

A That's correct.

Q Now, did there come a time, after that telephone conversation, when you met Mr. Segal in person?

A Yes.

Q And did you recognize the vlice of Mr. Segal when you met him in person as the voice of the person that you spoke to on the telephone?

A I didn't pay any attention that way, no, sir.

MR. WALKER: I move to exclude it.

MR. DOYLE: There has been testimony from at least two other witnesses in this case to the effect that they did mention Mr. Buttram to Mr. Segal at various times in the fall of 1969.

MR. WALKER: That's different, your Honor.

THE COURT: I will overrule the objection. There are other ways other than by identification of voice. Circumstantial evidence may establish that it is Mr. Segal.

BY MR. DOYLE:

Q State, sir, to the best of your recollection what you said to Mr. Segal and what he said to you on November 24, 1969.

A Mr. Acton placed a call -- I didn't hear that part of it -- and he said, "I want you to talk to Mr. Segal in New York City in reference to your mill and the property."

So I got on the phone and explained to Mr. Segal the mill, this mechanical method of how I processed ore.

Q Tell the jury the explanation that you gave to Mr. Segal.

A Our mill is different than conventional milling.

THE COURT: Just tell us what you told Mr. Segal.

THE WITNESS: Well, this is what I told him.

THE COURT: All right, "I told him."

THE WITNESS: All right.

A I told MR. Segal that our process was a disintegration or cleavage as material is put together, as opposed to grinding together, which is conventional; that we had milled a lot of tonnage of ores; we had milled cinnabar, which is mercury, successfully; that our costs were less than conventional and our recoveries usually higher, percentagewise.

I had been to the property, looked at it. It was an open pit operation, ore in sight; that I had taken a pan and panned by pulping, mashing up, free cinnabar, which is what our mill does, and it looked like a very good operation opportunity.

Q Is that the full extent of the conversation, to the best of your recollection?

A Yes, that's correct.

Q Now, directing your attention to January 13th, 1970, did you meet Mr. Segal on that occasion?

A Yes, I did.

Q Where did you meet him, sir?

A In the International Airport Hotel on the edge of the airport.

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MR. DOYLE: I don't believe the record is quite clear.

Q Can you identify Mr. Segal here in the courtroom, sir?

A Yes.

Q Would you point him out for the jury, please?

A That's him (indicating).

MR. DOYLE: May the record reflect that the witness has identified the defendant, Alan Segal, your Honor.

THE COURT: Yes.

MR. DOYLE: Thank you.

Q Now, who else was present at this conversation?

A Mr. Clegg and Mr. Acton.

Q Would you state to the best of your recollection what was said and who said it on that occasion?

A We passed pleasantries first for a little bit, and then Mr. Acton mentioned again to Mr. Segal that I was the party who had the mill, that he had talked to me about putting the mill on the Dixie Valley cinnabar operation; that I had material with me that I could show him, show at least what we did, and so I showed him a brochure of what we have done or pictures of it and ore samples of other operations.

Q Do you have with you today certain of the

photographs from your brochure that you showed to Mr. Segal on that occasion?

A I do.

Q Now, I show you Defendent Segal's Exhibit N for identification which is a group of photographs and ask you if you can identify it?

A The first picture shows --

Q Don't describe it in detail. Just tell us whether you have selected them from the brochure that you showed to Mr. Segal on that occasion?

A I have.

MR. DOYLE: Your Honor, I offer them in evidence.

MR. WALKER: May I ask questions on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. WALKER:

Q May I see these pictures, sir?

A Yes, sir.

Q Sir, were these pictures shown to Mr. Segal concerning your mill which you were hoping would be used at the mine?

A That's correct.

Q And the mill had not been placed in the mine at that time?

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MR. DOYLE: Objection, your Honor. This is not proper voir dire.

THE COURT: Sustained.

Q When were these pictures taken, sir?

A They were, I think, '66, I believe. The dates are on them.

Q They were taken in 1966?

A Whatever the date is on the back.

Q Were they taken down in Arizona somewhere?

A Yes.

MR. WALKER: I have no objection.

MR. DOYLE: Your Honor, may I ask the witness to describe briefly to the jury what these pictures represent, sir?

MR. WALKER: The pictures speak for themselves.

THE COURT: Sustained. Let me see them.

MR. DOYLE: I don't think they really do explain themselves.

THE COURT: Explain to the jury.

MR. WALKER: I would like to make one objection. I think these are irrelevant to the issues in this case.

THE COURT: Overruled. Go ahead.

BY MR. DOYLE:

Q Let me rephrase the question. Tell the jury what

explanation of these pictures you gave to Mr. Segal on that occasion.

A These pictures demonstrate several types of mercury ore from different properties that we have processed by simple milling and concentration which is, to my knowledge, no other way of doing.

Q And the red material in the photographs, what does that represent, sir?

A That is cinnabar, which is sulfite of mercury; it has to be heated and then it is reduced to metal.

MR. DOYLE: May I hand them to the jury so they may pass them around during the examination?

THE COURT: Yes.

xx (Defendant Segal's Exhibit N received in evidence.)

(Handed to jury.)

Q Mr. Buttram, directing your attention back to the meeting with Mr. Segal, would you relate to the jury the rest of the conversation that you had with Mr. Segal on that occasion?

A I think I covered it a little earlier in that we discussed the mill, the techniques and the property. I wasn't there that long.

Q Did you discuss with him the question of whether the mill could be set up feasibly on the property in question?

A Mr. Acton, I think, brought that up more than I did, but I confirmed that in my opinion --

Q What did Mr. Acton say and what did you confirm?

A That it was a good operation and I felt it would be mechanically feasible and economical.

Q Now, have you stated the full extent of this conversation, to the best of your recollection?

A I have.

Q Subsequent to the meeting with Mr. Segal, did you thereafter cause certain property and equipment of yours to be placed at the mine site?

A I did.

Q What was that, sir?

MR. WALKER: May we have the dates?

Q When was that done, sir?

A The first piece of equipment was a road grader to open up roads, to get into the property. That was February the 6th, 1970.

MR. WALKER: Your Honor, could we just have the date of the next item?

THE WITNESS: The next date is April the 8th, '70, when I took the first mill --

MR. WALKER: I object to this, your Honor, because it is clear from the testimony that Pioneer Development was

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no longer associated with the mine by April; that Pioneer Development had been sold as of March 15th.

THE COURT: Sustained.

Q Directing your attention to this group of photographs, Mr. Buttram, marked Defendant Segal's Exhibit M for identification, when were those photographs taken, sir, to the best of your recollection?

A They were taken over about three periods. This one was April the 7th, May the 3rd and in May.

MR. DOYLE: Your Honor, I would offer them, but I understand that there is an objection on the grounds of chronology. I do think they are still relevant, your Honor.

MR. WALKER: Same objection.

THE COURT: Let me see them.

THE WITNESS: They showed the mill up there--

THE COURT: Let me see them.

Can you lay a foundation?

MR. DOYLE: Yes.

BY MR. DOYLE:

Q Mr. Buttram, is the mine site as it is depicted in these photographs that were taken in April and May of 1970 -- was it substantially the same at that time as it was when you had seen it earlier to that time?

A Yes.

THE COURT: Overruled.

MR. WALKER: Your Honor, may I ask questions on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. WALKER:

Q Sir, the mill that is depicted in these pictures was not placed on the mine site as it was until April, is that correct, April 8th?

A That's correct, April the 8th.

Q So while the pictures show a mine site which was substantially as you saw it earlier, the pictures in so far as they represent the mill do not reflect the conditions as you saw them earlier, is that correct?

A Part of that equipment was already there when I first went up earlier, but the mill we put there was not there until April.

THE COURT: What's the mill? Which one of the pictures is the mill you put there?

THE WITNESS: That is the mill there (indicating).

THE COURT: Take out the ones that you put there, that weren't there earlier.

THE WITNESS: This shows --

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THE COURT: I don't care what they show. Take them out.

THE WITNESS: I can't do that. This all was up here at the time I came in. (Indicating)

THE COURT: I'm afraid you will have to separate the wheat from the chaff here. I don't know what was there at the time or not from this witness' answers.

b4

MR. DOYLE: I think I can ask a question on the voir dire that will solve it, your Honor.

VOIR DIRE EXAMINATION

BY MR. DOYLE:

Q Is the mill that is depicted in the photograph the same mill as had existed at an earlier time?

A I think we have two chronologies. When we say a mill, we mean a total operation or one piece of equipment. What I put there is one piece of equipment but with that you have to have ore bins, compressors, crushers, generator, so forth. The generator, the ore bin, the crusher were there and two ore tables which I replaced. The mill I put in later.

MR. DOYLE: I think it is all admissible to show what mill we are talking about. There has been reference to the mill.

THE COURT: I'm not sure I know what the witness means by a mill.

Do you mean the tall building in the pictures? Is that what you mean by a mill? Or do you mean the machinery in the building? What do you mean?

THE WITNESS: Let's call what I put there the disintegrator, that breaks the material.

THE COURT: I will overrule the objection and let them in for what they are worth.

How much longer, Mr. Doyle?

MR. DOYLE: I am about finished with Mr. Buttram.

MR. WALKER: Your Honor, I would like to ask one more question on voir dire on these pictures, if I could.

THE COURT: All right. We will recess at this time.

MR. DOYLE: Your Honor, may I make one request of your Honor? Mr. Buttram has made a specific request.

THE COURT: I realize he is from out of town, from a long ways, and I am staying over so we can get him home, but we don't seem to have much luck.

MR. DOYLE: I will end my direct examination now in the interests of permitting Mr. Buttram to leave.

THE COURT: We still have a problem on these pictures and it is a legitimate problem.

MR. DOYLE: Very well, your Honor.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. WALKER:

Q As far as these pictures are concerned, these pictures were taken some time after you met Mr. Segal, is that correct?

A Yes.

Q And you never showed these pictures to Mr. Segal, did you?

A No.

THE COURT: I will sustain the objection.

MR. DOYLE: Your Honor, I have no further questions.

MR. WALKER: Your Honor, I think I can be very brief.

Any other questions by other counsel?

THE COURT: Any cross-examination by any defense counsel?

All right, Mr. Walker.

CROSS EXAMINATION

BY MR. WALKER:

Q Mr. Buttram, sir, at the time that you met Mr. Segal --

MR. WALKER: Excuse me, withdrawn.

Q You mentioned two times that you had conversations with Mr. Segal, one was over the telephone, November 24th; is that correct?

A That's correct.

Q Did Mr. Segal tell you - that time that Pioneer stock had been trading for approximately 25 days?

MR. DOYLE: Objection, your Honor.

THE COURT: Sustained. It is outside the scope of the direct examination.

Q Was there any discussion, sir, concerning the stock of Pioneer at that time?

A Mr. Segal listened. He didn't do much talking. I was the one telling him about the mill and the property.

THE COURT: Would you answer the question? Was there any discussion about Pioneer stock?

THE WITNESS: No, sir.

THE COURT: No.

Q Sir, as of that conversation, you did not have any milling equipment of yours at that mine site, is that correct?

A No.

Q That is correct?

A That's correct.

Q As of the January 16th or 18th meeting that you had with Mr. Segal, you did not have any milling equipment at the mine site, is that correct?

A No.

Q A road grader was placed at the mine site when, sir, in February?

A February the 6th.

Q And then any other equipment that you put at that mine site, that you brought to the mine site was on April 8th, is that right?

A And more later.

MR. WALKER: No further questions.

MR. DOYLE: No further questions.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will recess now until tomorrow morning at 10 o'clock. Don't talk about the case. Don't let anybody talk about it with you. We are making very good progress here, so please pay attention to my instructions.

(Jury excused)

THE COURT: Mr. Doyle, let's get to the requests of charge. That is the first order of business here.

MR. DOYLE: My own requests are very much tailored to the case and there is almost no boilerplate in this. I really don't think it would be worthwhile for me to take any time to eliminate them.

THE COURT: All right.

MR. DOYLE: The non-specific ones --

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THE COURT: If they are as good as your work has been in this case, I may read them verbatim.

MR. DOYLE: Thank you, your Honor.

THE COURT: Any others?

MR. KIRSCHNER: Yes, your Honor. In behalf of defendant Zuber, we offer a number of instructions.

THE COURT: I know you have. I will be happy to read them. I don't appreciate the duplication in all this stuff. I will take them. I have got nothing else to do.

MR. KIRSCHNER: I have handed them to the clerk already, your Honor.

THE COURT: Let me have Mr. Zuber's.

MR. KIRSCHNER: May I indicate the first instruction, your Honor, is the conspiracy instruction.

THE COURT: I have read it. I deny it in the form in which you request it.

I gave them all to you, Mr. Doyle, this morning. I gave all the requests to you. Do you have the others?

MR. DOYLE: Yes, I redistributed them to counsel so they could pare them down.

THE COURT: The one you gave to the clerk, he gave to me, I gave to Mr. Doyle, he gave back to you, Mr. Kirschner.

MR. KIRSCHNER: That's correct. Then I returned

it to the clerk again and marked the section which we were interested in. I have another copy. May I submit that to the clerk, your Honor?

THE COURT: I saw the one in which you were interested. Perhaps I have it. Perhaps I am the guilty party--probably am.

Do you have any, Mr. Newman?

MR. NEWMAN: Nothing that I could have added to all that I saw before me, your Honor.

THE COURT: You are a wise man.

MR. PAPE: Just for the record, I have incorporated four of Mr. Doyle's and four of Mr. Zuber's, your Honor.

MR. KIRSCHNER: May I make one oral request? We have not had an opportunity to do this. We request that the jury be instructed that Mr. Zuber is not on trial here for possession of a firearm.

THE COURT: No, I deny that.

All right. Makes good reading.

(Adjourned to 10 A.M., December 10, 1974.)

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Defendant

Direct

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Defendant Exhibit

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UNITED STATES OF AMERICA

vs.

HOWARD FINKELSTEIN, et al.

December 10, 1974, 10 A.M.

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(Jury in box.)

MR. DOYLE: May I proceed, your Honor?

THE COURT: Yes.

MR. DOYLE: The defendant Segal rests.

MR. KIRSCHNER: The defendant Zuber rests.

MR. NEWMAN: The defendant Finkelstein rests.

MR.PAPE: Your Honor, on behalf of the defendant Scardino, Mr. Walker and I have agreed to stipulate that the defendant Scardino's Exhibit B is a business record.

MR. WALKER: No objection.

(Defendant Scardino's Exhibit B received in evidence.)

MR. PAPE: The defendant Scardino now rests.

THE COURT: Any rebuttal by the government?

MR. WALKER: No.

THE COURT: The jury may take a short recess.

(Jury excused.)

THE COURT: I suppose you want to renew your motions?

MR. DOYLE: The defendant Segal renews all the motions previously made and also, your Honor, makes a motion to strike certain testimony which is no longer connected in the case which was received subject to connection in light of your Honor's ruling with respect to the defendant Levine. We move to strike the testimony of the witnesses whose link was Edward Levine. Their testimony should be stricken, the testimony of the witnesses Fingar, Berman and Nerenberg.

THE COURT: How do you link Eddie Levine to the conspiracy?

MR. WALKER: Your Honor, Mr. Eddie Levine was reporting information in such a way that it is quite clear that he had close association with individuals who were affiliated with the company. I think that the circumstantial proof of that is in his own statements which were being offered to show his state of mind.

THE COURT: What is the evidence which links Eddie Levine to the conspiracy? I don't want a lot of conclusions, Mr. Walker, like your requests to charge, which I don't appreciate getting at the eleventh hour, and they are useless.

MR. WALKER: Your Honor, the evidence that links Eddie Levine to the conspiracy is the gross deceptive nature

of his statements coupled with the fact that the stock, he said, will go up, that information from the company will be forthcoming, that his whole family has bought the stock, and so forth.

THE COURT: I think there is sufficient evidence to link Eddie Levine to the conspiracy, and, therefore, his acts, his declarations are binding on other members of the conspiracy, even though there was not enough to hold his father in as a co-conspirator.

MR. DOYLE: Your Honor, all the other motions are renewed at this time.

MR. KIRSCHNER: Your Honor, we renew all the motions previously made and we move further to strike all the testimony with respect to Mr. Zuber, all the hearsay testimony, on the grounds that there has not been independent evidence to connect Mr. Zuber.

THE COURT: Denied. And on your motion for a severance, that is denied, too. You have not made sufficient showing.

MR. NEWMAN: The defendant Finkelstein renews his motions at the end of the government's case, and for the record, your Honor, I would like to renew my motion on behalf of the defendant Finkelstein for a severance. I recall that in my original motion I neglected to state that I had been

informed that the defendant Segal if he were testifying in a straight trial on behalf of the defendant Finkelstein would testify at that trial that he never told the defendant Finkelstein about any illegal act, any conspiracy to manipulate stocks or to use the mails.

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THE COURT: I deny your motion. The showing is insufficient.

MR. PAPE: I would like to renew all the motions previously made, and I would like to add that concerning the motion for a severance if the defendant Segal were to testify, he would testify that the defendant Scardino was not present at a meeting in Dallas, as to which Mr. Acton testified, at which Pioneer was discussed, or at any subsequent meeting at which Pioneer was discussed.

THE COURT: Denied.

Are you ready to sum up?

MR. DOYLE: Can I have five minutes?

THE COURT: I have to rule on the requests to charge. Can you sum up shortly after the rulings on the requests to charge?

MR. DOYLE: Yes.

THE COURT: We will take a short recess and then I will rule on your requests to charge.

(Recess.)

THE COURT: The court has made its rulings on the defendants' requests to charge in the margin of the requests, and if counsel would refile them with the clerk they would become part of the record.

MR. DOYLE: Thank you, your Honor.

THE COURT: Do you want to sum up first?

MR. DOYLE: Yes.

THE COURT: Give me some idea of the time.

MR. DOYLE: One hour or less.

MR. KIRSCHNER: Half an hour to 45 minutes.

MR. NEWMAN: Same, your Honor.

MR. PAPE: Same, your Honor.

MR. WALKER: I will try to be no longer than an hour and 15 minutes.

See if you can keep your eye on the clock. I don't want to cut anybody off. I don't want to sit here during the lunch hour or have the jury exposed to it during the lunch hour. So, Mr. Doyle, you sum up. Then we will take a short break. We will try to take a short break every hour. See if you can guide yourself so that we get this done today. But if we have to run over, we will.

MR. DOYLE: Has your Honor ruled on the government's requests to charge?

THE COURT: Only in the broadest possible way. I

deny every single one of them in the form in which they have been requested. I will grant them in substance. But I got my job ahead of me putting them in the English language.

MR. DOYLE: Is that true of the supplemental requests also?

THE COURT: Yes.

MR. GREENBERG: With reference to the aiding and abetting request.

THE COURT: I will give my usual aiding and abetting, straight aiding and abetting charge; I will not give yours in this form.

MR. GREENBERG: May I inquire of the government, I gather from the way the case has been presented, Mr. Zuber is charged as being an aider and abettor with regard to the substantive counts?

THE COURT: Is that your position, that you charge him with aiding and abetting?

MR. WALKER: He has been charged as a member of the conspiracy in Pinkerton and as a principal and aider and abettor as to the extent that the jury may find. With regard to the grant transaction he was a principal.

THE COURT: Do you charge him in the substantive count as being an aider and abettor?

MR. WALKER: Yes, your Honor, as well.

THE COURT: That is all we ask. We understand that under Pinkerton he might be responsible if he is a member of the conspiracy.

MR. PAPE: Your Honor, I did not file a request for an instruction concerning the definition of power of attorney.

THE COURT: Do you really want it? I don't think this jury is one that does not know what a power of attorney is. I hate to clutter the charge with such things as power of attorney. I will give it if you want it.

MR. PAPE: Yes.

THE COURT: Do you have a request?

MR. PAPE: I will present one at the lunch hour, your Honor.

THE COURT: I will simply tell the jury that a power of attorney is an instrument by which one person is authorized to act for another. Is that good enough for you?

MR. PAPE: Yes.

THE COURT: If I forget it, remind me. It comes in like a sore thumb.

MR. WALKER: Your Honor, the only request that the government would ask the court to consider at this time in

view of your Honor's ruling with respect to one of the requests of Mr. Doyle, goes to the question of what the defendants' knowledge must be on the question of sale of unregistered stock, and your Honor in request number 8 of Mr. Doyle has in effect granted a request of charges that you must find the defendant Segal knew at the time of the alleged acts there was a duty under the law to register the stock with the SEC.

THE COURT: I thought I granted it in substance, didn't I?

MR. WALKER: I think the court said granted.

THE COURT: If I did, I meant granted in substance.

MR. DOYLE: It says granted in substance.

MR. WALKER: Very well. The government is of the view that specific intent is not required.

THE COURT: Dardi says you should know or should have known.

MR. DOYLE: In the footnote.

THE COURT: Let's bring the jury in.

(Pause.)

THE COURT: Will counsel come over just one moment?

(At side bar.)

THE COURT: I would like you to avoid charging the jury. In other words, leave the law to the Court and talk about the facts that bring it within the applicable principles, but leave the law to the Court. I don't want to have to cut you off because you start charging the jury, but if you do, I will.

MR. DOYLE: Thank you, your Honor.

MR. WALKER: Very well, your Honor.

(In open court.)

(Jury present.)

MR. DOYLE: May I proceed, your Honor?

THE COURT: Yes, Mr. Doyle.

MR. DOYLE: Mr. Foreman, ladies and gentlemen of the jury, Mr. Walker, fellow counsel:

This is now that time in the case when it is the attorney's job to weave the threads of the evidence together and bring it all in to focus, and on behalf of my client, **Alan Segal**, I submit to you, ladies and gentlemen of the jury, that the Government has failed to prove any of the material allegations of the indictment and that the proof,

when it is looked upon in its entirety, establishes that there was no fraud in this case on the part of Alan Segal, there was no manipulation or artificial inflation of prices of anything by the defendant Alan Segal, and there was no wilful sale of unregistered stock by the defendant Alan Segal.

Now, I would like to address myself initially to the fraud allegations of the indictment because fraud requires an intent to deceive and the evidence establishes that the defendant Segal had no intent in this case to deceive anybody about anything.

Every Government witness who testified in this case stated unequivocally that he believed that the mercury mine acquired by Pioneer Development Corporation was a good and valuable asset, and there was introduced into evidence an economic feasibility report of Pioneer Development Corporation, predicting profitable operation of the mine.

There was also introduced by Mr. Buttram photographs that were shown to Mr. Segal, showing to him how mercury is separated from ore and the equipment that Mr. Buttram, in his conversations with Clegg and Acton, intended and did in fact put at the mine site.

There were two conversations between Mr. Buttram

and my client, Alan Segal, one on November 18, 1969, and one on January 18th or 19th, 1970, and in both those conversations - and you heard Mr. Buttram, and if anyone here is a disinterested witness, with no stake in the outcome of the case, it is Mr. Buttram -- you heard him explain to you how he explained to Mr. Segal that his process could be put into feasible, workable operation at this mine site.

So we have a case in which the Government's witnesses, and that includes Mr. Clegg and Mr. Acton, together with the defense witness, Mr. Buttram, establish a solid, factual basis in the record for the belief on the part of the defendant Alan Segal in the value of the mercury mine being acquired by this company and motivated by that belief, Mr. Segal, in any conversations attributed to him, by any witness in this case, did nothing more, ladies and gentlemen, than state what he knew about the company.

Remember those words. He simply stated what he knew about the company.

Now, let's talk for a minute about the charges in this indictment that Mr. Segal and others would go around touting the stock. If you read this indictment, it sounds as if Mr. Segal is being charged with running some kind of an operation with telephone calls going here and there, and messengers and running around, trying to find people to buy

Pioneer stock.

But who were the witnesses that the Government called to support this theory suggested in the indictment? The witnesses were in two categories. In one category they were close business associates of Mr. Segal, men that he had done business with in the past, men, for instance, like Mr. Swidler, a Certified Public Accountant; Mr. Schlager, who was Mr. Segal's own Certified Public Accountant.

Mr. Schlager, who was the Certified Public Accountant for Alphabex of which Mr. Aymes is president. Mr. Aymes himself, the president of a corporation.

These were people who, No. 1, knew Alan Segal very well. They were substantial business people in the community and basically their testimony was that he told them about a stock and that they bought it.

In a couple of instances Mr. Segal was buying the stock himself.

Mr. Ben Cohen, the attorney in Miami. You will recall his testimony. He is a member of the firm of Cohen & Hogan, as I recall. He practices law in Miami. Mr. Segal lives in Miami.

Mr. Cohen was a friend of Mr. Segal when the events that he testified about took place. He is a

friend of Mr. Segal today.

Mr. Segal invested $11,000 in stock of Pioneer Development Corporation on or about -- let me just look at the date on the slips -- December 31st, 1969. Mr. Cohen wasn't fooled by anything. Mr. Swidler wasn't fooled. Mr. Schlager wasn't fooled. In fact, as I recall, Mr. Swidler testified that Mr. Segal brought up or showed a financial statement about the company. Mr. Swidler said he didn't take it seriously. He bought the stock because he knew Alan Segal, that's all.

Now, a man who is going to go out and defraud the public, does he go to his close friends? Does he go to his business associates? Does he go to men who are sophisticated, men who recognize an over-the-counter stock as a speculative investment, men who, if they are cheated, aren't going to have any trouble finding out where Mr. Segal is and bringing it up with him. Indeed, men like Mr. Aymes. These are not the kinds of people that a defendants talks to if he is going to conduct some kind of a swindle or a fraud.

These are the kinds of people you talk to if you believe in what you are doing, and that is what Mr. Segal did.

What is the second category of witness that the

Government has brought before you to try to bolster up this theory of some kind of a fraud or a swindle here?

We can categorize this witness or witnesses as people not connected with Mr. Segal. And when I say not connected, I mean people who knew him well in the past, his business associates.

As I recall the record and the testimony in this case and, of course, it is your recollection that controls, not my recollection or the recollection of co-counsel, but your recollection, but as I recall it, the only witness independent of Mr. Segal -- no, I'm sorry, there were two. The first one was Robert Meyer.

Let's talk about Robert Meyer because he is a very interesting witness.

First of all, Robert Meyer, you will recall from his testimony is the gentleman who went out and bought Pioneer stock long before he ever met Alan Segal.

Most of his purchases of the Pioneer stock had already been made by the end of 1969. Then he decided to make an inquiry about the company, which he recognized, by the way, as he mentioned on cross-examination, was a very speculative investment. He decided to go and ask some questions about the company on his own initiative. In other words, Alan Segal didn't go seek out Robert Meyer

and say, "Go buy Pioneer stock. That's a great company. It will really go somewhere."

Not that at all. That is not this kind of a case.

Robert Meyer came to see Mr. Segal. He came to see Mr. Segal and he asked him certain questions, and he got responsive, truthful answers. He got answers about the existence of the mine, the fact that the mine was not in any kind of commercial, large scale production.

He got statements about future profitability and fugure earnings which Mr. Segal and every other witness in this case believed.

Every question that he asked he got an honest answer to.

He mentioned mobile heating units, and I don't recall any other testimony in the case about mobile heating units, one way or the other. However, I do recall that a company called Precise Power was acquired by Pioneer Development Corporation, and I do know that the Government hasn't proved that that was a false statement or a reckless statement.

As I recall the evidence, there is no proof whatsoever with respect to that point, and the Government has the burden of proof on each and every material element

of the charges in this case. They must prove that there was a fraud, and they haven't.

Now, let's talk some more abut Robert Meyer because there is a second element in the Government's theory of this case which is that there was some affirmative duty on the part of Mr. Segal, when Mr. Meyer came up to see him, and they had their discussion down in the restaurant, to volunteer a lot of facts that Mr. Meyer never asked about.

Now, if something is material -- and material means relevant or meaningful or important -- if something is material to a sophisticated person and an experienced investor like Mr. Meyer, you can very well believe that he would ask that question, but the evidence in this case is that he didn't ask these questions. So it is perfectly reasonable for you to infer or conclude that tit was perfectly reasonable for Mr. Segal not to volunteer the answers. If he wanted to know if Mr. Segal was selling stock, he could have asked him if he was selling it. If he wanted to know if there were past earnings as opposed to future earnings, he could have asked him that question.

There is no evidence in this case of a single question about this company asked by any witness that was not responded to truthfully and honestly and fully to the

best of his knowledge by the defendant, Alan Segal.

And by the way, Mr. Meyer then described the purchases of Pioneer stock that he made subsequently as averaging down, which is a very technical term, demonstrating, first of all, his expertise in the investment field, a way by which, if you believe that ultimately a stock will go up and the value of it is going down during a certain period of time, you go ahead and buy more shares, even thought the price is going down, because if you paid $6 for the prior shares, and then $3 and $2 for the later shares, you have a lower basis so that ultimately if the price goes up, you make a greater profit because your average cost per share is lower.

So he was no babe in the woods.

Now, the other persons whom the Government I am sure will want to characterize to you as "victim" in the case -- and I will put a circle around one exception and get to him in a minute, Alan Grant -- the other witnesses, as I understand the testimony in the case, really have no connection with the defendant Segal whatsoever.

We heard testimony from Sol Fingar and his testimony, as I recall it, is that he had a conversation with a gentleman named Eddie Levine about Pioneer stock, and Eddie Levine made some statements about the company that

may have been somewhat exaggerated, but what evidence is there in this case that the defendant Alan Segal ever had a conversation with Eddie Levine? What is the evidence in the case that anybody else connected with this case had a conversation with Eddie Levine which resulted in Eddie Levine making statements to Mr. Berman.

Ladies and gentlemen, proof in a criminal case can't be that tenuous. Proof has to be direct. This is not proof. This is speculation. And you cannot convict any defendant on the basis of speculation.

My recollection is that Abner Berman was in the same situation and Howard Nerenberg talked to Berman who talked to Eddie Levine, and then I believe one of those witnesses, and I frankly don't remember which one it was, had also talked to Robert Meyer. But none of them, ladies and gentlemen, none of them had talked to the defendant Alan Segal, so that the only thing attributable to the defendant Alan Segal in all of this is what he told Robert Meyer.

But let me go back to this very important scheme in this case. He told Robert Meyer what he knew about the company, and he answered his questions truthfully and completely, so there was no intent to deceive in his conversation with Robert Meyer.

And you can't attribute any intent to deceive or fraudulent scheme or anything else to Mr. Segal if as a result of that conversation Robert Meyer then went ahead and told A, B or C.

And let me point out something else very interesting about this so-called scheme or swindle to defraud. There is no evidence that Alan Segal said to Robert Meyer, "Go out and tell your friends about this stock. Get them all into it because it will really go up." Nothing like that. Nothing.

It was a dignified, factual conversation, responsive to questions of a sophisticated investor, and that is all it was. It was no "tout" as the indictment charges and as the Government, I expect, will argue or want to have you believe.

The only other witness I see who had any contact with Mr. Segal in even the alleged capacity of a "victim" would be Allen Grant, and his conversation simply consists, as I recall it, of going in to see Mr. Segal and having a very brief conversation, where Mr. Segal said to him he thinks Pioneer is a good corporation and he would buy the stock at $3.

Well, all the other witnesses that were called in this case thought that Pioneer was a good corporation

so we really have the same result and the same analysis of that evidence as we do of the other evidence.

Mr. Segal said what he knew and what he believed in good faith about the company.

That is really the end of the touting aspect of this case.

Now, there is another charge In the indictment which is equally without any basis in the proof in this case, which is that there was an artificial value of the price of Pioneer stock injected into it by persons that include the defendant Alan Segal, but when you really analyze the proof and the evidence in the case, you will see that there was nothing artificial about the price of the stock.

First of all, think about the testimony of the brokers and the dealers who testified in the case. They testified that the over-the-counter market is a negotiated market and that a bid and an asked price in the pink sheets is an invitation to trade.

Now, what is the evidence connecting Mr. Alan Segal to the trading of Pioneer stock. I think that the best way of analyzing that is to look at Government's Exhibit 150-B in evidence, which is really a very revealing document. It shows in the upper part the list of all

the firms who were quoting that stock in the pink sheets, and let's go through that list, keeping in mind that the only direct evidence about Mr. Segal' activities with respect to the trading of Pioneer stock in the marketplace was the testimony of Mr. Azzerone of Karen & Company.

Let's look at the companies, other than Karen & Company, that were quoting Pioneer stock in the pink sheets.

First Philadelphia Corporation. Well, that is very interesting. You will remember that Michael Klegg, the Government witness, whom I will say something about later on as to his credibility, made a statement that Mr. Segal had told him that he was controlling the trading of First Philadephia Corporation. But there is no evidence of that in this case. There was no witness from First Philadelphia Corporation saying that Mr. Segal ever did anything with them, anything whatsoever.

There is no evidence of any communications or contact, direct or indirect, between Mr. Segal and First Philadelphia Corporation.

Orvis Brothers. What is the testimony about Orvis Brothers? The testimony about Orvis Brothers is really very, very simple. There was the broker, Mr. Kostos, who knew Mr. Segal, who knew that Francine Zahl

was a secretary, who opened accounts for Francine Zahl and Alan Segal and stock was traded through those accounts.

There was no testimony, no suggestion of any thing about that trading that was artificial or peculiar or illegal or improper whatsoever.

Mr. Kostos had his attention directed to certain specific trades in the account at Orvis Brothers in which there was substantial buyers of Pioneer stock who took their stock from Mr. Segal's account. They were referred to as "crosses".

Now, one interesting thing about a cross is that it has no effect on the marketplace whatsoever. It is entirely internal with in Orvis Brothers. So if there were buyers of stock in Orvis Brothers, buying stock for Mr. Segal's account, there was no market in fact at all. It wouldn't appear anywhere. But there is a second thing which is really very fascinating about the Orvis Brothers account and which goes back to the first point that I made, which is that this is a case of good faith and no fraud.

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Who were the big buyers at Orvis Bros., buying their Pioneer stock from Alan Segal? The big buyers were Hyman Freedman, Edson Structures, Jack McCarthy, Nat Furber, Daniel Weiss, and Robert Meyer, who bought 200 shares, Bonnie Kroll. Have any of those people testified in this case? Jack McCarthy, 5,000 shares; Hyman Freedman, a thousand shares and then 1,500 shares. These were big buyers. Did the government call them as witnesses to testify as to what induced them to buy Pioneer stock? Is there any evidence in this case whatsoever that Mr. Segal made any representations to them through false, exaggerated, or whatever, stories about Pioneer stock? There is a complete absence of proof on the most significant purchases of the stock that the government has proven no fraud. Morgan Kennedy. No connection with Mr. Segal, no evidence about it whatsoever. Economic Planning. I will say something about Mr. Karfunkel in a few minutes. But let me first address your attention to this.

We had Mr. Clegg make a comment that Segal told him that he was controlling the trading in Economic Planning. But we did have one thing from Mr. Karfunkel when he took the stand. We were able to establish -- and when I say "we," I am not saying that I brought it out or that Mr. Walker brought it out; I'm simply saying that the evidence

came out through their witness' testimony that his firm, Economic Planning, had been trading Pioneer stock since, as I recall it, November 3, 1969, for about two months or more before he even met Alan Segal. Now, that is the testimony of a witness with personal knowledge of the events.

Certain other testimony of Mr. Karfunkel, I submit to you, was a complete fabrication. But the testimony that he gave to you about trading Pioneer stock wholly independently of Mr. Segal for two months directly contradict Mr. Clegg's hearsay, speculative testimony that Alan Segal was directing or controlling Economic Planning. And more importantly than that, Karfunkel's testimony about his trading of the stock at a profit when hereally didn't know very much about the company, he was trading simply as a market maker, as it is called, establishes that there was activity in this stock, substantial activity, indeed, almost all the activity in this stock that really had nothing whatsoever to do with the defendant Alan Segal, nothing.

P.P. McDermott & Company, a major firm. Any connection with Alan Segal? Zero.

V.F. Matteo in the pink sheets, November, December, the pink sheets even at the end of December. So we don't see what was happening in January or February. No connection with Mr. Segal. Nothing.

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L.D. Sherman. No connection with Mr. Segal.

Mayer & Schweitzer, a very interesting item, the correspondent firm for Grimes, Hooper, where Mr. Clegg was selling out stock through Jay Walker, a nominee, contrary to his sworn testimony to you. Michael Clegg, not Alan Segal. There may have been other trades with Mayer & Schweitzer that had nothing to dowith Michael Clegg. But one thing we are sure, there is no testimony in this case that Mr. Segal had anything whatsoever to do with Mayer & Schweitzer.

Gardner Securities. This is Michael Gardner's company before it went out of business. As I recall his testimony, he didn't say that Alan Segal had anything to do with Pioneer before he went out of business, and Mr. Segal let him use his office space at a time when he was having economic difficulty.

M.J. Manchester in the sheets for two days. And there was one witness, I believe it was Mr. Schlager, who testified to the purchase of some Pioneer stock as a result of a conversation with Mr. Segal. But we know all about that. We have covered that. You have heard Mr. Schlager's testimony. That was not a fraud; that was not artificial.

And, finally, Hornblower & Weeks in the pink sheets

briefly. That may or may not have some connection with the fact that Clegg and Acton initiated a series of transactions that resulted in the sale of stock through Hornblower & Weeks in the early part of November, 1969. It may have some connection with that. There is no evidence of it, and there is no evidence that Mr. Segal had any connection with this whatsoever, with their being in the pink sheets.

So all we have in this case, ladies and gentlemen, is testimony that Segal asked Mr. Schiffman to take the due diligence file, which Schiffman testified was this file, of Pioneer Development Corporation to a broker. Mr. Schiffman testified that he took this file to a broker, that he suggested that the stock open at 5 and 6, and the broker opened the stock at 5 and 6.

Now, you can see from the testimony of people like Karfunkel and others that there is no magic in the numbers of trading of these stocks. They are traded by these market makers without any particular reference to the inherent value of the stock or anything else; they are traded as a number.

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But the most important thing to remember about this is that a bid and asked is just an invitation to trade. It doesn't mean that anybody is going to buy Pioneer stock

unless there is an independent demand for it. There have to be people somewhere who become interested in the stock and want to buy it. And the fatal defect in this case and the reason that the evidence is to the effect that there was no artificial inflation of anything by Mr. Segal is that there is no evidence connecting Mr. Segal in any significant way with any of the independent demands for this stock.What we have is an isolated transaction at Karen, and on top of all that remember that we are dealing with charges that require an intent to defraud, an intent to deceive, evil motive, bad intent.

What did Mr. Schiffman testify about all of this? Mr. Schiffman testified that he was Mr. Segal's attorney, that he also conducted some business transactions for Mr. Segal. But he acted in a dual capacity, and he testified that he was an expert in the area of securities law. What did Mr. Schiffman say when I asked him whether he ever told Alan Segal directly or indirectly that there was anything illegal about the transaction at Karen & Company? He said he never made any statement to Mr. Segal that there was anything illegal or improper about it. So we have Mr. Segal bringing his own attorney into the picture. And his attorney doesn't waive any red flag and say, "Wait a minute, there is something here about Karen & Company that

is improper." That doesn't happen. And if there were a fraud it would have happened.

Now, what is the other element of the government's attempt to show that Alan Segal was involved in artificially inflating prices? First, let me just address myself to the simple fact that we are all going to enter this case--you are going to enter it in your deliberations -- with a very realistic view of hindsight. And like many other thousands of companies that at one time were thought to have a good future and then were not profitable, Pioneer Development Corporation ultimately turned out not to be profitable.

Now, Mr. Walker would have you believe because that turned out to be the fact, that the prices at which it was trading in in the over-the-counter market were necessarily inflated, but that is nottrue. Prices are negotiated among brokers and dealers on the basis of the knowledge that they have about the company and about the market at the time that they enter into their negotiations. Because of whatever factor we don't know, ultimately Pioneer was not able to be put into operation.But you will not accept for a minute the proposition that because ultimately the stock proved to have little or no value, as a number of other witnesses testified, they are still

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holding the stock and there is no market for it, that doesn't mean at the time it was being traded it had no value as that is understood in the marketplace; it simply means that it was being traded on the basis of the information then available. You have a goodpart of that information yourselves in the form of evidence through testimony and documents.

So let's eliminate that part of the alleged fraud or artificial inflation. The simple fact that the stock dropped later is not evidence of anything artificial.

Let's go to that part of the government's case that you might characterize as an attempt to establish a manipulation or an artificial inflation. Who are the witnesses that had been called in connection with that? First of all, you have Burney Acton, who testified that Mr. Segal told him not to sell shares after he obtained from shares for trading to open the stock. Now, Mr. Acton tried to get you to believe a story here which was patently untrue, which was that his motive in going out to get potent loans by starting the movement of the Pioneer stock out in the west, ultimately into in Hornblower & Weeks in Denver, that that was motivated by the fact that Mr. Segal's check for $20,000 was returned for insufficient funds. Mr. Acton tried to mislead you about that, ladies and gentlemen of the jury, because the debit advice was only

issued by the bank on November 17, 1969, more than two weeks after Mr. Acton started the movement of that stock to get loans or whatever it was, and then ultimately the stock was sold. The fact is that there is nothing credible in Mr. Acton's testimony to lead you to believe that there was any agreement not to sell anything. The most that you could conclude, if anything, from his testimony is that they made a representation to Mr. Segal that they would get loans, and that, of course, would involve not selling stock, but pledging stock.

Mr. Acton, you will recall, has pleaded guilty in the case, although he could not really tell you anything concrete that he had done that was wrong. He stated he pleaded guilty because he was guilty. But here we have a co-conspirator, an accomplice, taking the stand and telling all of you that he really didn't do anything wrong; he thought the stock was free trading, he believed in the company. But he is awaiting sentence. And the government's' representations to the court about whether he told the truth or not are going to be very important for Mr. Acton on the day of sentence.

Michael Clegg, the second government witness, obvicusly lied to you when I asked him on cross-examination whether as charged in the count to which he pleaded guilty

he had sold a thousand shares of Pioneer stock through Grimes, Grooper & Masser in Los Angeles. Do you remember the self-righteous tone of that answer --"Most certainly not; that was Jay Walker's stock." But now we know that Jay Walker if he were called as a witness would testify that he sold that stock for the benefit of Clegg and Acton.

You heard the testimony of Mr. Grimes that Clegg came to him and told him that he had a list of people he was closely allied with who were going to be selling out stock. And whose name is the first name on that list? Jay Walker. So we have a witness, Michael Clegg, who came in and demonstrably, really undisputedly, lied to you, ladies and gentlemen of the jury. Now, on that basic alone you could reject all his testimony.

However, that is not all about Mr. Clegg. Mr. Clegg is awaiting service of a five-year sentence for wire fraud. Mr. Clegg is awaiting sentence in this case. Now, what did Mr. Clegg have to say that he did wrong here, as long as we are talking about Mr. Clegg? Here again a complete vacuum as to what he did wrong. He couldn't identify what he did wrong. He believed in the company. He said he put all that money in the mine. He was told that the stock was free trading. Nothing concrete from Mr. Clegg that makes any sense out of his role in this situation,

except a motive to lie, except a motive to help the government prove its theory of this case, because he is b3 "cooperating."

Now, let me make it very clear to you that when I talk about these witnesses who are cooperating with the government and telling you that they have a motive to lie, I am not in any way criticizing Mr. Walker or any other government agent for presenting the case. What I am telling you is a structural problem in the way this case has been presented to you. And it is simply something that we have to face. We have witnesses who do have a motive to lie. Their motive is to tailor their testimony and their evidence to fit into what they think the government wants to prove. Leading questions by the government without any evil intent whatsoever have a very serious effect on the psychology of people like that. They tend to move their testimony in the direction of what they think the government has to prove, so that they come in, Clegg and Acton, and say there was agreement not to sell. They know the government has to prove that or think it has to prove it or has charged it against Mr. Segal. What is interesting about that? Why is that the area of the case where they have a very strong motive to change the facts? Because it doesn't really involve any admission of guilt on their part whatsoever.

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If they pleaded guilty and admitted the fraud or admitted to some kind of knowing manipulation or knowing sale of unregistered stock, you would have one thing. But you have witnesses who have come in, who have pleaded guilty, but said they did nothing wrong. Who have they tried to put it all on? They tried to put it all on Alan Segal by saying there was some agreement, some contract on their part not to sell their stock.

Now, this business of not selling stock has not been proven in this case. For several reasons it has not been proven, one, because the witness introduced to support it are not credible. By the way, let me mention one or two things about Mr. Acton and leading questions. He testified that his memory is very hazy about the events and that his recollection has indeed been refreshed by the government's leading questions. Mr. Clegg testified that even his memory, although I would say quite selective in some areas, he testified that his memory was also hazy and had been refreshed. He testified that he had told that to one of the attorneys in this case recently.

Now, let's go on to the second reason why the alleged agreement on the part of these gentlemen not to sell Pioneer stock has not been proven. It has not been proven because almost immediately after the alleged agreement was

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entered into Mr. Clegg, in fact, sold some stock. It is as simple as that. Mr. Clegg went out and sold a thousand shares of stock. And, secondly, there was set in train this peculiar series of transactions characterized as a loan by Clegg and Acton, but which ultimately resulted in the sale of a tremendous amount of Pioneer stock, 29,000 shares of Pioneer stock through Hornblower & Weeks, over $200,000 worth of shares. Was there any agreement not to sell on the part of these people? This is incredible evidence. Let's look at the other witness. I don't think Mr. Azzezone needs much comment because I don't think his testimony adds to very much. But let's not forget the fact that Mr. Azzerone admitted that he lied to the Securities and Exchange Commission, admitted that he lied when he submitted his application with respect to his own brokerage firm. He testified on direct examination to getting instructions from Alan Segal about bids and quotes and buy and sell, but admitted that only a few weeks before in the grand jury when asked the question, "Were you ever instructed by Alan Segal?" His answer was, "I don't recall." Although he certainly would have recalled it as well three weeks ago as he could have recalled it here today on the witness stand.

b4

Let me move on to Michael Gardner and Michael

mmh13

Karfunkel. Mr. Gardner is a gentleman who is named in this case as a co-conspirator, but he told you that he has been promised immunity from prosecution in return for his co-operation. He is a man who has been sentenced to a year and a day prison term in this courthouse. He is a man who has been sentenced to serve a three-year prison term in the Northern District of Illinois in connection with the receipt and disposition of a million dollars worth of stolen United States Treasury notes. That is Michael Gardner. That is the Michael Gardner who admitted on cross-examination that he had lied to the FBI. He sent the FBI on a wild goose chase looking for a fictitious person. Michael Gardner comes in and testifies to you about a conversation that he said took place with my client, Alan Segal. This conversation is uncorroborated, except in a hearsay form by Michael Clegg, who said that Zuber said that he was acting for Segal. But there is no support elsewhere in the case for this conversation that Mr. Segal was responsible for the trip that Mr. Howard and Mr. Zuber made out to Reno for this meeting at the Holiday Inn. There is no corroboration for that.

Michael Gardner is not a credible witness. Look at his demeanor on the stand. Remember on direct examination how he described this conversation and this incident? He

said, "Mr. Segal told me that I should have some people go out and check out the situation, inquire into it to see what was going on about the sale of stock?" And then the shifting sands of Mr. Gardner's testimony on cross-examination. I said to him, "There was no discussion of money from Mr. Segal in this conversation?" What was the answer? "Oh, yes, there was." Suddenly Mr. Gardner remembered that it was about money. He simply shifts his testimony when it suits his purposes.

Let's look at what the evidence is as to the question of whether Mr. Segal had anything to do about the trip that these gentlemen made out west. First of all, let's look at whether Mr. Segal ever got anything whatsoever out of that trip. The answer quite simply is not a penny, nothing. Who got the money from that trip? Well, the government has a lot of charts here showing who got money from the trip, and I want to point out to you the conspicuous absence of Alan Segal from these charts. I am referring to Government's Exhibit 151C in evidence; I am referring now to Government's Exhibit 151B in evidence; and I am also calling your attention to the conspicuous absence of Alan Segal from the proceeds of this situation. And I am going to call your attention to something that is on this chart, some very interesting items.

mmh15

Crocker Citizens National Bank -- A.C. Enterprises, wire of funds, $14,000.

Do you remember the name A.C. Enterprises? A.C. Enterpises is Mr. Acton and Mr. Clegg. Crocker Citizens National Bank for A.C. Enterprises, wire of funds, $10,000.

Finally, Government's Exhibit 151A in evidence, also with respect to this block of shares that was put in motion by Clegg and Acton almost immediately after they had their conversations with Mr. Segal that resulted in Mr. Segal's being given the shares to open in New York. Some very interesting items on this.

Burney Acton, cashier's check, $13,000.

Crocker Citizens National Bank, account A.C. Enterprises, $10,000.

So Mr. Segal got nothing out of this adventure, but Clegg and Acton got money. And I submit to you, ladies and gentlemen of the jury, that as to the charge that Mr. Segal did something like this, you can't accept the testimony of a Michael Gardner unless it has some support in credible evidence in the record. And the evidence is to the contrary. The evidence is that this was somebody else's venture, most likely Michael Clegg, because you will remember that Michael Clegg was not at the meeting.

Michael Clegg said that Zuber came and he called

mmh16

up Segal in New York, although it seems likely from Gardner's testimony that Segal was not in New York, but was in Miami at the time. And they went through the story about shares being sold, not knowing shares being sold, and all of that conversation. Not credible evidence, not credible substantiation of corroboration.

By the way, when you deliberate about whether to believe a witness who has testified and you have a witness who is an admitted liar, an admitted felon, like Michael Gardner, you ask yourselves, "Can we rely on this?" And then you ask yourselves the next question, "Can we find substantiation or corroboration for it in other credible evidence in the case," or, rather, "Other evidence that is credible as opposed to other questionable type evidence." And you can look for it. And if you look at the facts here you see things like that that don't corroborate it; they contradict it; they suggest it didn't happen. And that is important.

Now, there are other things. You will remember the testimony of Karfunkel, one of the few parts of his testimony that had corroboration, had to do with checks issued as a result of shares purchased by him from Finkelstein at $1.50. Those checks -- remember, this is the Mr. Finkelstein or the Mr. Howard who supposedly was sent by my client

on an adventure out to the west to try to find out what happened to the shares, and it depends on what version of Gardner's testimony you take, maybe to get money, although Acton and Clegg said that Segal owed them money. But here we have more checks. Let's look at the endorsements on these checks, 61B in evidence. There is an endorsement that says George Karfunkel, Michael Clegg -- not Alan Segal-- Michael Clegg, the same Michael Clegg who started selling out Pioneer after he supposedly promised Mr. Segal not to sell.

T4 am jks

And there is another check, Government's Exhibit 61-C in evidence, made out to Leah Karfunkel, in the amount of $5767, endorsed over to A. C. Enterprises.

Again Acton and Clegg, not Alan Segal.

So the whole story about not selling shares and about a trip out West has no support in credible evidence in this case.

What is the rest of the charge against Mr. Segal? What does it amount to?

It amounts to a charge that Mr. Segal directed trades.

Now, you will recall some extremely vague testimony from Mr. Gardner about directed trades. He admitted on cross-examination that he had never, in connection with that testimony, been given any documents to try to tie up his testimony with documents, to try to find some support in the evidence for the testimony that he was handing out to you here in the courtroom.

He never even attempted to do that.

And there is testimony of Michael Karfunkel. Now, you are the triers of the fact. You determine the credibility of witnesses. You saw Michael Karfunkel on the stand on cross-examination. You heard him say that there came a time in 1971 when he decided to tell the

whole truth to the Securities and Exchange Commission and that he talked about Pioneer Development Corporation at that time, and he testified that at no time during that conversation did he mention one word about back-dooring or about directed trades.

Mr. Karfunkel is a man who was promised immunity in this case. He is a man who knows he will be prosecuted if his cooperation does not work out to the satisfaction of the Government. And Mr. Karfunkel, I submit to you, has given you incredible evidence, incredible that you can and should reject about alleged conversations with Mr. Alan Segal about "back-dooring," conversation corroborated not by any objective evidence In the case, not by exhibits or documents, corroborated not at all, but dovetailing, dovetailing with the testimony of a witness who was even more incredible, the witness Michael Gardner.

Now, with respect to this charge of manipulation or fraud or artificial inflation of prices, there is a chart that the Government has introduced showing sales of Pioneer stock by Alan Segal. The chart doesn't purport to show who bought the shares or whether they were misrepresented or anything of that, and we have gone all over that and we don't have to repeat.

Another important thing the chart doesn't do, it

doesn't purport to show the overall profit and loss situation with respect to Mr. Segal's trades in Pioneer stock, so that it doesn't really or it isn't intended to prove that he made or lost money on these transactions and, indeed, whether he made or lost money is of no importance or of no significance in the overall posture of the case.

Mr. Segal also purchased Pioneer shares during the period of time, as some witnesses as Mr. Ben Cohen, Mr. Schlager, Mr. Aymes have told you, demonstrating his belief in the company.

So there is no credible evidence here of any artificial manipulation, any artificial injection of value and, indeed, the testimony that was offered, even if you accepted it at face value, really amounts to nothing but ambiguities and vaguenesses, because directed trades were described to you as trades that take place outside of the marketplace and a directed trade, if it constitutes taking a buyer who wants to buy shares and finding a seller and putting them at the same broker, that depresses the market in a stock because it means that the demand for the stock from the buyer is not spread out or generated over the whole market causing possible increases in the asked price among the various broker-dealers.

A directed trade, in other words, has one of two

effects:

It can avoid either raising or lowering the price of Pioneer stock.

And there is virtually total ambiguity in the testimony as to what effect these so-called directed trades had on the market of Pioneer stock, whether they were buyers coming into the market who were directed to sellers or whether they were sellers directed to buyers.

And there is no corroboration from any ofthe buyers or the sellers.

I asked Mr. Karfunkel whether he ever talked to any of the principals of any of these companies, whether he asked them whether Mr. Segal had been in touch with them to put them in touch withthe broker, or Mr. Segal had done anything in communicating with them, and the answer was no.

And the Government hasn't offered you any corroboration whatsoever for this testimony by calling any of the buyers or any of the sellers.

There is a long list of names that Mr. Karfunkel read off. He was sitting there in this chair with, as you will recall, a sheet of paper in front of him, saying, "This is directed. That was directed," and so on. But that is all we have. We don't have anybody else

to support that, nothing.

Now, I would like to address myself to the last part of this case and the one that I think will present you with the least difficulty in your deliberations, which is the charge of wilfully and knowingly selling unregistered stock.

Now, you will recall the testimony in this case from the Government witnesses and in the category of Government witnesses I include Mr. Acton, Mr. Clegg and Mr. Schiffman, to the effect that this company was different from a number of other companies, in the sense that it had shares issued prior to 1933. It had a large shareholders list which has been introduced in evidence as a Government exhibit and which reminds me, by the way, just going back for a Moment, about the charte that Mr. Segal was conspiring to manipulate or to fix prices or to inflate prices in this case; this reminds me of the testimony of two of the Government witnesses to the effect that there were preexisting shareholders still holding Pioneer stock, who were free to sell it on the open market. There couldn't be any control of those shareholders in this case. There couldn't be any realistic manipulation or fixing of the price because they had only acquired a portion of the shares, perhaps 50 per cent or less. The other

shareholders were free to sell and, secondly, the fact that Mr. Clegg had a group of close associates who not only could sell but did sell these shares.

So, manipulation is not only proven, but is proven to be unworkable and absurd as an interpretation of what happened here.

Let me go back to the shareholders list. Every Covernment witness testified in the case to an understanding that this company, which, in fact, Mr. Grimes referred to in the jargon of "a shell" -- what he meant was something that all the witnesses have echoed in various forms· the belief that because the company had been incorporated and its shares had been sold prior to 1933, that those shares could be resold without the necessity for filing a registration statement wih the Securties and Exchange Commission.

Now, let me direct your attention on this point specifically to the testimony of Mr. Schiffman who testified that at a meeting in Los Angeles at the Century Plaza Hotel there was a conversation with an attorney, and who was that attorney? The attorney was Mr. Frasier.

Mr. Frasier was the atotrney for Pioneering Development Corporation. If anybody was in a position to know whether this stock was the type of stock that had

to be registered with the Securities and Exchange Commission, it was Mr. Frasier, and Mr. Schiffman testified, the Government witness, that Frasier said to Mr. Segal, on that occasion, that the stock was free trading.

Now on that testimony alone you can and should acquit Mr. Segal with respect to the unregistered share aspect of this case. But there is other proof on this. It is not only Mr. Frasier, the company's attorney.

Mr. Acton testified that he was told that the stock was free trading by Mr. Hayes Schaeffer, and you will remember the testimony of Mr. Knigge who said that Mr. Hayes Schaeffer is the president of the transfer agency, so the transfer agent, Nevada Agency & Trust Company, told Mr. Acton that the stock was free trading.

There is no witness in this case who testified to anything else but that he thought the stock was free trading.

Now, in conclusion, let me remind you of certain things in deliberating about this case. These are serious charges that the Government has made and failed to sustain. This is not a bad check case.

Mr. Segal isn't charged with giving checks for stock and then not paying for them on time and having to be dunned by stockbrokers or creditors to get payment for

his checks. It is not that kind of acase.

Mr. Segal isn't being charged here with violating a civil injunction that Mr. Schiffman testified was one of the things that he discussed in connection with the use of nominees. Indeed, this is not a case where the use of nominees is evidence of any intent to defraud whatsoever.

You will recall that Miss Zahl testified that Mr. Segal never told her to keep it a secret that she was his secretary and his nominee.

You will recall the testimony of Mr. Kostos, the broker, that he knew that Miss Zahl was Mr. Segal's secretary and that there was nothing illegal in the transactions that occurred at Orvis Brothers.

You have, ladies and gentlemen, what boils down to a case of complete and total good faith; good faith in a company that came from the mouths of the Government witnesses; good faith in the belief that this was not the type of stock that had to be registered with the SEC and that the stock was freely trading; good faith on the part of Mr. Segal who whenever in a rare situation that he was asked questions about the company answered them truthfully.

You have, in sum, a case in which not a single one of these serious allegations has been established by

any credible evidence, and so I submit to you, ladies and gentlemen of the jury, that you will go into the jury room and you will apply your common sense to this testimony; you will look at these witnesses and you will decide; would I make an important decision in my life based on that testimony unless it was corroborated?

You will look at all the evidence in the case and you will conclude that the evidence establishes not only that the Government has failed to prove beyond a reasonable doubt, but that the affirmative in the case establishes Mr. Segal's complete innocence of these charges, and you will return a verdict of not guilty, I am confident, on all counts.

We will take a short recess at this time.

Don't discuss the case at this point. Wait until you have heard everyone's summation, including the Government's and the Court's instructions, and then you can discuss it.

(Recess.)

MR. NEWMAN. With your Honor's permission, Mr. Foreman, ladies and gentlemen of the jury, Mr. Walker and fellow attorneys:

First, I want to thank you for your attention in the case. It hasn't been as long as we expected, but it has been long. There have been hundreds of documents read to you and I know it hasn't been that easy.

Now, the case ended somewhat earlier than I thought it would, and I guess you thought it would, and I hope you will forgive me if I fumble around a little bit. I have about 35 pages of notes here during the trial about my summation, and I just want to say right now that all the evidence is in in the case and from here on you are going to be hearing -- you have heard some lawyers talking to you and you will get a charge from the Judge as to the law.

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Now, it is very important, I think, on behalf of my client, Howard Finkelstein, to me, that you separate evidence and proof in this case from lawyer's talk, and that means me, too, and that this case is decided by you jurors on the evidence and legal proof, not what someone says you ought to think, would have, could have, should have, might have happeneds and must have happeneds. That is not evidence.

Now, I am going to go back to that word, and I hope I don't bore you with it, but it is the key to the case today involving Howard Finkelstein. It is the key

to the defense andit has got to be the key to the prosecution.

Now, it is the facts and the facts alone that have to decide this case and you, as jurors, are the sole triers of the facts.

Some people say that you are judges, but you don't wear robes.

Now, I want to talk about the facts. I want to talk about the evidence in the case.

First, you have got to realize that almost every drop, every word, every document, everything about this case goes back almost five years. We are back now in December of 1969, just about Christmastime, because that is the time chronologically when you first hear the name Howard or Finkelstein.

Now, hindsight is wonderful. Everyone has got 20-20 hindsight. If we look back we know exactly what we should have done, what he should have done, and what was right and what was wrong.

But, in December of 1969 you will find Howard Finkelstein talking to Michael Gardner. That is the first time his name is mentioned in this case.

The evidence, the proof in the case is that [illegible] him somewhat socially; they had dinner together

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with their wives; and Gardner asked Mr. Finkelstein to go to bed for Mr. Segal.

The first time that he is in this scenario here. Way before then, lots of things have happened. You have heard the evidence and you have heard all the proof. The witnesses have testified right here what they did back in '69, the beginning of the year, into the summer, and their getting stock and their buying it from people who used to have stock, and they start off this company, and they have got some kind of an option with people building landing strips in Southeast Asia and a mini bike factory and a mine.

Now, let's look at Mr. Gardner and what he said and what the evidence that he gave to us really means.

Now, Michael Gardner was a man in trouble up to his neck, and that was as clear as a crystal. There were cases pending. There were sentences that he had where his life, his liberty -- not money; a lot of people testified here they lost money, but Michael Gardner was on the stand for his liberty, where he is going to spend the next five or three or two years, either walking around in the street or in some jail is in Mr. Walker's hands. Mr. Walker is the man who can say, "You cooperated with us. You did what we thought you should. Okay, it goes

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to your credit."

No five years, four years, three years, it will be one year.

So you have got Michael Gardner there with every single motivation to help the Government in their case, to say whatever the Government wants him to say or what he thinks they want him to say regarding the defendants in this case. No motivation for him to help anybody in this case, and he says a lot of bad things. But what does he say about Mr. Finkelstein, this man who has got every motivation to help the prosecution? He says he knew him. He said he asked him to go out to Reno to help with a problem and that they went to Segal's office and he doesn't know what happened after that.

Now, can you believe that this man who is straining in front of the United States prosecuting attorney to show how he is helpful is not going to wrack his brain and pick out anything he can if it exists to help the United States Attorney? Of course he wracked his brain, and what he came up with, what he told here in court was that he asked Mr. Finkelstein to go to Reno to solve a problem.

Now, we are still in December of 1969, in January of 1969. When do you next hear about my client? He is outside of Reno. He is at a mine. Now he has

gotten to know these people who were at this meeting between the West Coast people and the East Coast people -- because there are two groups here, no question.

Acton and Gregg out West -- just to hear them talk you know they are different -- and you have got Gardner, Mr. Segal, Mr. Azzerone; they are the New Yorkers.

And here is Mr. Finkelstein. He is at the Lone Tree mine and it is 1969, December 1969, and the price of mercury is very high and there is Howard Finkelstein, and he sees not just a hole in the ground, but this is a strip mine situation, and Mr. Buttram is there and Finkelstein sees these things.

This is not pie in the sky; this is not blue sky stuff that doesn't mean anything, just talk, a bunch of guys in a boiler room. This is a mountain. We are out in Nevada. How big is it? You heard Clegg, the government witness, not my witness, not a defense witness, Mr. Clegg said when I asked him -- I had no idea -- "Is it a hundred acres? 50 acres? 50 acres? More?" He said, "This is a whole mountain; this would not be depleted in several lifetimes."

December, 1969, and here is Howard Finkelstein out there.

There is an allegation in the indictment that says that Howard Finkelstein was not regularly employed at that time. And I assume it is put in there to show that he was a bad guy in some way. But it is true. The government said it, and it is true. He was between jobs. And he meets these men. He meets Acton, a college graduate; he meets Clay, who has a doctorate in psychology. He goes out there, and there is Buttram. Now, it was a tragedy that Buttram could not stay over. He testified only very briefly. But he did say -- I didn't have a chance; it was rushed right through -- but he did say that he spent his entire life doing just this type of work. He did say, along with Clegg and Acton and other men, that this mine had this mercury ore

and it was real. There were geologists and they dug holes and they tested it, and in his opinion this had great possibilities. Now, the mine flopped. And as we look back with our wonderful 20-20 hindsight, I can just hear Mr. Walker saying, "This mine never made one cent." He is right. It never made one cent. Now, a lot of people invest in companies -- and we see it if we look at the Times every day -- you read the stories-- Pan American Airlines, it is losing a million dollars every quarter, every month maybe. But people are buying the stock. It has assets, of course, but it is losing money. These are investments. Life is made up of all kinds of hopes, and hope is a very powerful motivation. People do a lot of things when they hope. Was this hope real or was this hope some dopey kind of belief when anyone who is prudent or anyone who is reasonable should not have hoped. Mr. Walker had time to question Mr. Buttram. And you didn't hear one word, not one word come to you in this courtroom that Buttram is anything but 100 per cent legitimate. He is a man who has devoted his whole life to these kind of things. He said there were possibilities. Now, life is made up of probabilities and possibilities. We all hope we are going to be successful, and we fail, all of us, fail in certain things. Everyone in the world has failed at something.

That is not the crime here. The mine failed. Nobody made any money. People lose money. If the mine had been a success and everyone made money, there would be no trial; no one would have complained. The stock would have gone up. If the mine had been terrific, we would not be here. And our 20-20 vision says they should have realized the mine needed more capital; they should have realized that the price of mercury can go up and be high and can go down and be low.

Now, Finkelstein is out there and he sees this mine. And that is real. And then the next thing you hear, Mr. Finkelstein is in New York and is trading furcoats from Alan Grant, Mr. Acton's stocks. That is important. It was Acton's stock. And there is Mr. Zuber there.

Now, Alan Grant had a motivation, too. He said that the furcoats were worth about $15,000. He put a bill of $42,000 on it because he knew it was a speculative stock. He wanted to mark it up. I don't really know what his motivation was. I leave that for you to judge. But the net result of all of this is that Alan Grant gets nothing. Gone are his seven coats, and all he has is his stock, and it goes down, and, finally, it has not value. So according to his testimony, he is out $15,000, and when he comes into court he identifies Howard, Howard Finkelstein,

Bob Howard.

Now, is he the kind of man who if stuck for $15,000 is likely to bend over backwards and say nice things about someone or omit saying something harsh, something punitive against someone after he has been stung for $15,000? Of course not. And Alan Grant said that Zuber was there. He called his broker to check. Now, that is very significant. He does not say, "Okay, I will take the stock because you are such great talkers; you conned me into this; you are terrific; here are the coats." He calls his broker. Yes, the stock is being traded.

Now, the next thing that you hear is there is a receipt, and for some reason Zuber gives an option so that Zuber can buy the stock back. And it is witnessed by Bob Howard on the receipt, Howard on the option.

It says here in the indictment Howard Finkelstein, also known as Robert Howard, Bob Howard. He is known by that. He uses it in business. I went into it when I had my opening to you. People know him by that name.

Now, let's be reasonable. If you believe or if you know that you are selling phony stock, do you sign a name that people know you by? Or do you sign Joe Blow and say, "I will never see the guy again," and out the door. No. You have seen it. It is in evidence. He signs his name.

mmh5

Why is that?

Here is the stock, Pioneer Development stock that you heard so much about --

Could I have one share, or, rather, one certificate, please -- here is the certificate of the 100 series. I picked this right off from the top. Now, it says Pioneer Development Corporation, and the name here is of someone who has not been mentioned, Carolyn Raynor. There is a seal on it. It says Pioneer Development Corporation, incorporated May, 1918, Nevada. There has been all kinds of testimony in this case about this stock not being registered, and there is a document from the Securities and Exchange Commission of the United States Government that this stock was not registered. But I didn't hear -- I don't know if you heard it -- anyone who said in this case that by law this stock had to be registered, or anyone who came to you and said in this case, testified and swore under oath and said, "I am an expert and in my expert opinion this stock, although it bears the seal 1918 incorporated, had to be registered, was not exempt under the grandfather clause, which means anything before the passage of the securities and exchange law. I didn't hear anyone say that "In my expert opinion this stock had to be registered."

THE COURT: Mr. Newman, that is a matter of law as

to which I will charge the jury. I would not let any witness so testify in this court. That is a matter of law.

MR. NEWMAN: At any rate, three witnesses testified who were employees of the Securities and Exchange Commission, and one of them was a lawyer. Hindsight. By hindsight we can all see problems when the stock was going to be bought up and sold to other people. And you will probably hear that this was a reissue and that when it is reissued, even if it is exempt under the grandfather clause, you got to register it. And registration makes sense; you want to protect the company. I am not saying this stock should have been registered or should not have been registered. All I say to you is that as you look at the proof and the evidence in this case and you go back to 1969, should the average person looking at this stock and hearing what Howard Finkelstein has been told, would he suspect that this stock can't be traded? And he traded it in the classic sense of a swap.

Now, when you deal in stock you ought to be careful. But, more than that, here a bank in Waltham, Massachusetts, a witness came from that back and said he is an employee of the bank, the successor bank to the bank which took Pioneer Development stock as collateral for a loan. I asked that man, "Was Mr. Gardner or Mr. Segal

all customers of your bank? Did you know them? Was this taken as collateral for a loan because of accommodation and you knew them?" He says, "No, no record in my file they had ever done business here before."

Then you have got the transfer agents; you got Hornblower & Weeks; you got huge stock brokerage firms, and they are trading in this stock. And here is Howard Finkelstein in January of 1969, who is given this stock. He comes to New York City. He gives it to Mr. Karfunkel, takes back a couple of checks. He signs his name on one, Bob Howard, the name is known by. If you are going to steal or cheat or be involved in something phony, you don't put the name that people know you by. If you wroteJoe Blow or something like that and got someone else to cash it for you, that is something else. But every one of these checks is not thrown away after you sign them. We all know that. So when you look at this and you take it in context and you see it for what itmeans, there are two sides to it. And with good old hindsight, we can say, "Hey, he should not have done it." But with the totality of everything that is going on you have got to say that the average person, not a stockbroker, not a lawyer, but the average person, like someone you might know, would certainly say, "Hey, this is good."

mmh?

Mr. Finkelstein is accused of being a conspirator, along with other people in this case. And I have just gone over the evidence as I recall it. Is he?

What does Clegg say? What does Acton say? Well, Acton was the first witness. He has pleaded guilty in this case and he has said he will be sentenced by the judge in this case. He has told us that depending on how he cooperates, Mr. Walker may or may not make a recommendation. He expects that his accommodation will be weighed, which is what every witness says here as a government witness who has cases against him, which is normal and understandable.

Now, you have got Burney Acton, the vice president of this company, coming here as a government witness, having pleaded and awaiting sentence. Is Burney Acton going to lean over for one of the defendants and displease the government bringing him here as a witness? Is he going to try to help the defendants? What is his motivation? To save himself. He is going to cooperate. And he also wracks his brain, "What can I do to cooperate, to help the government convict these defendants?" What does Burney Acton say? He met Mr. Finkelstein and they became friends. He brought him out to the mine. He was with them at the bulldozers, saw them working, saw all the things that Mr.

mmh9

Buttram verified. Was there one word from the admitted conspirator?" All he had to say is, "Yes, I told Finkelstein about this; he was with us." That is all he had to say. It would help the government's case, put him in a good light. Did he say it? He did not, although there was every motivation for him to help the government's case and say it.

b3 He didn't say it because it didn't happen.

And then Clegg, the president, who not only has pleaded guilty in this case as a conspirator, but he has got another case out of town, and someone mentioned 15 years. Now, when you got that hanging over your head you will do anything to keep from doing that time, anything. And you don't lean over to help a defendant; you give the government everything you can, because you are pleading for your skin. And what does Mr. Clegg say about Mr. Finkelstein? He was out there; he saw him, too, friendly with him; he was at the mine. Does Mr. Clegg say one thing which even hints that he brought Mr. Finkelstein into this? I suggest to you that you don't go marching in alone to a conspiracy; you can't conspire by yourself. And this is a government witness. All he had to do to help the government's case was say, "Yes, we were at the mine. I told him what I had in mind."

He never said that, never. And here is a man

who pleaded guilty here. He never said that. Never.

So you have got Acton, Clegg, Gardner, all government witnesses, all trying to help themselves, to save themselves. And they don't say, "Yes, we told Finkelstein what this was all about? He was with us." They don't, although they had every motivation to help the prosecution here.

I'm not saying to you that the proof in this case and the evidence in this case shows that Howard Finkelstein is not a conspirator in this case at all because his role was small and he comes in late in the case, when all the stuff is done and, in fact, the stock is on its way down and out. That is not it, because a small piece of the jigsaw is just as important as a big one to make the picture. But this is not a jigsaw puzzle case. And the fact that Mr. Finkelstein's name is in this from December into February and the fact that he is with these people and the fact that he does things for them does not make him a conspirator, because lots of people have been through this thing; their names have been woven from the first day to the last day. And you will probably hear it again.

Now, Walker, Jay Walker, his name is all over the place, right from the beginning, bought, sold, meetings. Is he here? No.

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Francine Zahl, look what she did with this. Her name was on stock; she bought, she sold, she was in Segal's office, she was all over this. Is she a piece in the jigsaw puzzle? Sure. Is she a conspirator? No. She was never arrested, never indicted, never charged. Yet she was working; she was helping. Was she necessary for what was being done? I don't know. But she might have been. And she had a big function in this. Is she a conspirator? No, because there is no proof that she knew what this scheme was and that she said, "Okay, I'm in," or that anyone said, "Come on, you're in." Not at all.

Let's look at motivation here and the evidence that you have got. You got two partners; the evidence shows you have got Acton and Clegg on the west coast. They are partners. That is the first thing that came out in the testimony. And you got Gardner and Segal on the east coast. They are right in the same room working together. And the case in effect is trying to tell you that these two sets of partners invited Howard Finkelstein into this picture, got him into this deal and he worked in this deal. Look at the motivation. You have got a stock situation and you got a company that started going in August, and here by December the stock is trading at $8, $9 already. You want to bring in some guy and say, "Here, come on in"? First of

all. Do you want to bring in more people at all? The more people in a deal the more problems there are. Is the motivation here that they brought this man in and that he was one of them? Not that he did some things for them. A lot of people do a lot of things -- transfer agents, brokerage houses -- sold, bought, registered, did all different kinds of things. They are not conspirators. Doing something involved in this case does not make a conspirator.

Now, as you find the facts in this case and the evidence in this case you got to use what has been told to you, what you heard and what you have seen. I think it was very significant in this case that the government closed its case with five huge charts. I could not see them from where I was sitting, so I moved behind the jury box to see them. These cards showed stock, money traced. It came to $335,426.59. They accounted for the last 59 cents in this case on those five charts. I don't know if all of you were conscious of it as I was, but I didn't see Bob Howard, Robert Howard, Howard Finkelstein on any of those charts, not one place. That is significant. That is significant because I want you to examine the meaning, the reality of Howard Finkelstein's role, what it means. That he did things here cannot be denied. But what they mean in this picture is the question. Is he a conspirator with these

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men? Or is a flunky whom they used to make deliveries, someone they took out to the mine and made big promises to, wonderful promises to. And I think when you look at the hard evidence that is in this case, not the speculations, not the background, the aura of stock trades and telephone calls and things like that, nothing theatrical, but when you look at the hard evidence and proof here regarding Howard Finkelstein, it is inescapable here is a flunky, not a conspirator. You have four cases here. You have heard all kinds of things. It was an overkill against Mr. Segal, trying to introduce what kind of car he drove, hoping it is going to spill over against the other defendants. There are a million transactions; there are a million telephone calls; all kinds of stock records. But you got to compartmentalize, you got to earn the money they are paying you here as jurors, you got to take the four cases and got to decide them separately, and when you look at Mr. Finkelstein's case you got to say to yourself, "Okay, I am from Missouri; you got to prove to me," because that is our system here. And when you do that and when you look at the proof, the hard proof, you got to say, "He is not a conspirator"; you got to say, "Not guilty."

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Thank you very much.

THE COURT: We will take our luncheon recess.

Return at 2:30.

Don't talk about the case; don't let anybody talk to you about it.

(Luncheon recess.)

AFTERNOON SESSION

(2.35 p.m.)

(Jury present.)

THE COURT: Good afternoon.

Proceed. Mr. Kirschner.

MR. KIRSCHNER: May it please the Court, ladies and gentlemen of the jury, Mr. Prosecutor, defense counsel:

This trial has lasted seven long, hard days. During the course of the trial you have been alert, you have been attentive, you have paid attention to the evidence and the exhibits as they have come in.

I know it hasn't been an easy task. On behalf of myself and on behalf of my client, Mr. Zuber, I want to thank you.

And during this summation, I am going to explain to you why the evidence in this case has not proved the allegations of the indictment against my client, Mr. Zuber.

This kind of a summation is a difficult situation for this reason: The lawyers that sum up have to anticipate the arguments that Mr. Walker is going to make to you and then attempt to refute those arguments, so much of what I am going to do is going to be in anticipation of what Mr. Walker is going to raise.

Some things should be made clear to you, though, before we begin. The first thing is just because a person or a company dealt with Pioneer, that doesn't make him a criminal. Hornblower & Weeks dealt with Pioneer. Look at all the banks that dealt with Pioneer.

Now, you have to prove more than that. Just dealing with the stock alone -- and that is what most of this evidence that has come in so far has demonstrated, that people were dealing with the stock. Really nothing more than that. At least as to Mr. Zuber.

As you recall, Mr. Walker made his opening statement; I responded and told you what I thought the evidence would show.

Now, after several hundred exhibits and almost 35 witnesses later, what does the evidence show?

The Government would contend the evidence shows an alleged conspiracy that supposedly began in August of 1968 and ended on December 31st of 1970.

I calculated that out and it comes out to about 820 days.

Now, supposedly great quantities of stock are changing hands. We see these charts here and great quantities of money is going back and forth, and we see people who are suppposedly directing trades, putting quotes

in pink sheets, and people who are making markets.

Mr. Zuber didn't do any of that. There is absolutely no testimony that Mr. Zuber knew any of that was occurring.

Mr. Zuber did only two things during that 820 days -- and I am going to get into that. He didn't come into this picture until December 25th of 1969 and that is, if you read the Government's evidence right, half or almost 95 per cent from all these things we have heard about had occurred.

What did Mr. Zuber get? The testimony is he got two fur coats.

The charts which are here demonstrate that Mr. Zuber didn't get any money. No money went into his pockets.

The charts demonstrate that Mr. Zuber didn't own any ofthis stock. Mr. Zuber didn't attempt to buy any of this stock with bad checks. He didn't try to buy stock in any fashion.

All right.

What really does the evidence show? I told you when we began that the evidence would show two things with respect to Mr. Zuber. The first thing is this:

Mr. Zuber went to Reno with Mr. Howard to collect

some money from Mr. McKibbon because Mr. McKibbon was stealing. That is what the evidence demonstrated.

In addition to that, what else did Mr. Zuber do? He arranged for Burney Acton to transfer 6900 shares of his stock for some fur coats with Mr. Grant. We admit that. We don't deny that. There is nothing that is criminal with respect to those two acts in and of themselves. Nothing whatsoever.

And during the course of this statement I am going to explain to you why there is nothing criminal with respect to that.

I mentioned that you were attentive during the course of this trial and you were indeed, but I have to note that you were particularly attentive when Mr. Zuber's name was mentioned and you heard testimony about a gun. Remember, a gun supposedly, the butt of a gun in his belt here? I submit to you that that is the sex appeal for this case. That is the pizzazz. That keeps you awake. It really has no relevance to this case at all. It has no more relevance to this case than whether or not Mr. Segal drove a chauffeur-driven car.

T2 It doesn't help you to resolve the issues in this case. It is as much good to this case as ten shoes are to a butterfly. It doesn't do anything for you. It doesn't help you to resolve the issues in this case. Mr. Zuber is not charged with possession of a gun. That is not the charge here. The government has raised it for the reasons that I have indicated.

Let's look at the situation. What is the evidence from the witness stand? Mr. Acton testified that Mr. Zuber came over and he went voluntarily with Mr. Zuber to Reno and that Mr. Zuber did not threaten him. I asked those specific questions on cross-examination. Those were the answers that he came back with.

We have the Reno meeting. What happens after this supposed incident with Mr. Acton and Mr. Zuber? We find that within a week Mr. Acton is over at Mr. Zuber's house. He meets Mr. Zuber's children; he meets Mr. Zuber's wife; he brings some mini-bikes over to Mr. Zuber. I submit to you if that incident really happened would Mr. Acton have been over to Mr. Zuber's house?

Remember, all these things occurred five years ago. These witnesses have admitted that their memories are hazy. What would your memory be like? I think it would be just as hazy as theirs is, even hazier.

Let's look at Mr. Clegg. Mr. Clegg testified that Mr. Zuber came up to the sidewalk of his house and he said he saw a gun here (indicating). Now, what does Mr. Clegg say after that? Well, the first thing he says is he testified before the SEC in 1970 when he was working on the mine site. Do you recall that? And he admitted that the events were certainly clear and fresh in his mind at that time. He was asked about the McKibbon situation, the situation in Reno. He didn't even mention Mr. Zuber at that time; he didn't mentiona gun. Mr. Walker later asked him if he was asked those questions before the grand jury in 1973, did he mention anything about Zuber. He said, "No, because nobody asked me." But in 1973 he was asked about that incident again and he didn't mention it; he didn't mention it at all.

Now, in addition to that you find Mr. Clegg over at Mr. Zuber's house about a week later with a couple of mini-bikes, meeting Mr. Zuber's wife, meeting Mr. Zuber's kids. You find one other thing, too, that as a jovial note to this situation, Mr. Zuber having threatened Mr. Clegg and so forth, yet Mr. Clegg borrows Mr. Zuber's colored TV set and does not even return it. The government just raised it for whatever reasons it did.

What is Mr. Zuber on trial for? That is the

important question here. He is charged with knowingly and purposefully joining a sophisticated conspiracy, the purpose of which was, according to the indictment-- I am going to read it to you because I think it is important, because this is what the government claims Mr. Zuber did-- the purpose of this conspiracy, according to the indictment, was to secure control of many thousands of shares of unregistered Pioneer stock and then to establish an artificial market in the stock through manipulative devices, including quotes at arbitrarily selected prices, touting, giving assurances against loss, and directing trades, and then finally to sell, pledge and distribute this unregistered stock at artificially high prices, to purchasers and lenders in order to fraudulently obtain many hundreds of thousands of dollars at their expense. That is what Mr. Zuber is charged with doing.

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The government has suggested that what exists here is a scheme, a conspiracy to defraud people dealing in Pioneer stock. I submit that Mr. Doyle's argument indicates what kind of a conspiracy this was. But, more importantly, there is no evidence to demonstrate that Mr. Zuber was aware of a scheme, if there was one, to artificially inflate the price of the stock when he went to Reno and when he dealt with Mr. Grant. There is no evidence to that effect.

The government prove that Mr. Zuber was aware of this alleged conspiracy whose purpose was what I just read to you when he went to Reno and when he dealt with Mr. Grant. Mr. Zuber isn't charged with selling unregistered stock. That is not included in the indictment.

With respect to Mr. Zuber, the government has to prove an item of crucial importance, and that is, they must prove beyond a reasonable doubt that Mr. Zuber knowingly and intentionally joined the conspiracy, a conspiracy, with knowledge of its unlawful purpose. The fact that Mr. Zuber went to Reno and collected money, stock, the fact that he had dealings with Mr. Grant or not are not in and of themselves enough to make Mr. Zuber a co-conspirator. The mere fact that a person is at a meeting or associates with members of a conspiracy does not make him a co-conspirator. That is clear. The government must prove beyond a reasonable doubt that Mr. Zuber had knowledge of the items and purposes of this proposed conspiracy and that he joined it with the intention of furthering its aims and purposes.

By way of illustration let me show you what I mean. This is lawyers' talk, as Mr. Newman has indicated, but it is important. Let me tell you why.

Let's suppose we have a hotel and we have a manager of the hotel whose name is Mr. Acton and we have

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a clerk whose name is Mr. Clegg. Mr. Acton and Mr. Clegg have gotten together and they have decided that they are going to concoct a scheme or conspiracy to steal from the patrons of a hotel. The patrons go out; they go in and they take the patrons' money and they put it in a safe.

b2 Now, at the same hotel there is a bellboy whose name is Finkelstein; he works there; and there is a fellow whose name is Zuber and he works there. Now, Mr. Finkelstein and Mr. Zuber meet with Mr. Acton and Mr. Clegg all the time; they are working in the same hotel. There is nothing wrong with that. Mr. Acton and Mr. Clegg say, "We got this big packet of money; it is not safe here; somebody may steal it from us. Let's send it over to the bank."

Mr. Acton tells Mr. Clegg, "Mr. Clegg, why don't you get Finkelstein to carry this money over to the bank." And Mr. Finkelstein says, "I don't want to carry it over to the bank; I think I will have Zuber do it." So he tells bellboy Zuber to take the money over to the bank. Bellboy Zuber takes the money over to the bank. Is Mr. Zuber guilty of conspiring with Acton and Clegg to steal the money of the tenants? No. He is not, unless he knew what Mr. Acton and Mr. Clegg were up to. The mere fact that he took money to the bank is not something from which you could reasonably infer that he had knowledge of this scheme to

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steal. As a matter of fact, just the contrary, one would logically infer Mr. Acton and Mr. Clegg would not tell these two individuals what they were doing, for they could be witnesses against them. That is the situation we have here. We have Mr. Zuber, who is an errand boy in this situation. There is no evidence to indicate that he knew of these machinations that were supposedly occurring. Hence, in this case the government has got to prove to you that when Mr. Zuber went to Reno at Christmastime in 1969 and when he met with Mr. Grant he was aware and had knowledge of a scheme to manipulate the price of Pioneer stock and artificially inflate it.

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You are probably going to say, "We have heard a lot of testimony. What about what Mr. Acton said and what Mr. Clegg said and what Mr. Gardner said?"

I went through that testimony last night. I would like to read some of it to you. You are the deciders; you are going to decide what the facts show. Let's go over some of the testimony and see what it demonstrates with respect to what Mr. Zuber knew and didn't know. We will start with Acton's testimony:

"When you engaged in your conversations with Mr. Sonal, any conversations, did you ever tell Mr. Zuber about those conversations?

"A No, sir."

And then there are a couple of pages that go into the Reno meeting. In the Reno meeting Mr. Acton says basically that Mr. Zuber confronted Mr. McKibbon, "Look, you have stolen the money from that stock. Give it back." And Mr. McKibbon lied about taking it and selling it. And then Mr. Zuber grabbed him, and at that point Mr. McKibbon admitted that he had sold the stock and stolen the proceeds. Does that demonstrate that Mr. Zuber knew that there were stock manipulations going on? No, it doesn't.

Mr. Acton was asked this question:

"Q The purpose of this trip to Reno was to find out who sold the stock and get the money returned? Is that correct?

"A Yes, sir.

"Q Isn't it a fact that when you and Mr. Zuber went to Reno you both had the same interest and that interest was to get the money back?

"A Yes, sir."

Nothing wrong about that. Certainly, it is not what is charged in the indictment.

Now, with respect to the furcoats Mr. Acton was asked:

"Directing your attention to January, 1970, it was your stock that was traded to Mr. Grant, was it not, for the furcoats?

"A Yes, sir.

"Q And when you were present with Mr. Zuber and Mr. Howard, the trade was discussed with Mr. Grant?

"A Yes, sir.

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"Q Do you recall what was said?

"A Just that we were trading stock for furcoats.

"Q Now, that was the only time that Mr. Zuber was present with you in New York? Is that right, was at this meeting with Mr. Grant?

"A The only time that I recall."

No indication that there were discussions with Mr. Zuber and Mr. Acton about what was supposedly occurring here. Now, just to be sure we asked Mr. Acton this question:

"Q Did you ever agree with Mr. Zuber -- I am sure you remember this question -- to secure many thousands of shares of Pioneer stock --"

I will not read the whole question to you. But Mr. Acton was specifically asked that question, and the question was: Did you agree with Mr. Zuber to commit the purpose of the conspiracy? His answer was, "No." And then Mr. Acton was asked this question:

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Q Did you ever discuss any of those alleged purposes of the conspiracy with Mr.Zuber?"

And his answer was, "No."

I submit to you that there is nothing in Mr. Acton's testimony whatsoever to indicate that Mr. Zuber had any knowledge or was aware of any plan to manipulate Pioneer stock. There is just nothing there.

Let's look to Mr. Clegg. Mr. Clegg testified, was asked, "What happened when you first met Mr. Zuber?" And the answer that he gives is this --

Let me go back just a moment. If Mr. Acton could have possibly given information that would have put Mr. Zuber in the conspiracy, I submit to you that he would have. He had so much reason to, he would have put anybody into it that he thought he could put into it. He didn't put Mr. Zuber into it at all.

Now, you remember the conversation with Mr. Clegg. Mr. Clegg said Zuber came up to his house and said, "Let's go see if I can find the specific party." This is page 452. He said that he was representing Mr. Segal and that there was money owed Mr. Segal because the stock had been sold and that he is there to collect the money for it. That was it.

Nothing about stock manipulation. Nothing about anything else.

I submit to you, by the way, that conversation probably never occurred.

As you recall, Mr. Gardner testified that -- well, let me get into that in just a minute.

But at that point, Mr. Clegg says, "Well, what I did, I got scared and I picked up the phone and I called Mr. Segal in New York."

Remember that?

He said, "Yes, it must be a mistake made. So I called Mr. Segal in New York to find out what was happening."

Mr. Garnder's testimony, as I recall, was that Mr. Segal wasn't in New York at this time, but he was with Gardner. I believe Mr. Gardner said, "I believe he was with me in Miami Beach at this time."

But anyway, supposedly Mr. Clegg calls Mr. Segal and he has a telephone conversation with Mr. Segal. Mr. Zuber was not a party to this telephone conversation. The only thing that Mr. Zuber heard on this telephone conversation was Mr. Clegg supposedly calling Mr. Segal and saying, "Okay, what's going on here?"

Remember?

And that was it. And at that point, Mr. Clegg supposedly hands the receiver to Mr. Zuber and he says, Mr. Clegg then said what Mr. Segal said, which was, "Go straighten out the thing with Scardino." That was all that was said during that conversation.

All right. Now, this is important. I told you before I read this testimony that there was no evidence at all to prove that Mr. Zuber knew anything about a supposed stock manipulation or why this McKibbon stock was not supposed to be sold.

We admit that Mr. Zuber knew the stock wasnt supposed to be sold. That doesn't mean anything. The Government has to be able to prove beyond a reasonable doubt that Mr. Zuber knew why it wasn't supposed to be sold, and that "why" is supposedly the stock manipulation.

Now, this question was asked of Mr. Clegg and it is really important, page 482:

"Q Let me ask you another question. Going back again to your meeting with Mr. Zuber in between December '69 and New Year's, is that correct, sir, that Mr. Zuber did not say anything to indicate that he knew why the stock was not supposed to be sold?

"A No. He was not concerned with anything